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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1954

Nos. 357 and 358

CIRACO MANEJA, et al.,
Petitioners,

vs.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Respondent.

WAIALUA AGRICULTURAL COMPANY, LIMITED,
Petitioner,

vs.

CIRACO MANEJA, et al.,
Respondents.

BRIEF FOR PETITIONERS, CIRACO MANEJA, ET AL.

RICHARD GLADSTEIN,
NORMAN LEONARD,
240 Montgomery Street, San Francisco 4, California,
Attorneys for Petitioners Ciraco Maneja, et al.

EWING SIBBETT,
240 Montgomery Street, San Francisco 4, California,
Of Counsel.

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a counterclaim under Section 16(b) of the Act to recover for themselves and "others similarly situated" unpaid overtime compensation, liquidated damages, costs and attorneys' fees. By stipulation and order the original trial was limited to the issues raised by the complaint and answer, and the trial of the issues raised by the counterclaim and the answer thereto was deferred. The issues thus raised by the initial pleadings concerned the scope of the agriculture exemption contained in Section 13(a)(6) of the Act and of the sugar processing exemption contained in Section 7(c).

After the trial the District Court held that with certain exceptions the overtime pay provisions of the Act applied to the defendant employees. (77 F.Supp. 480.) The Court of Appeals questioned the appropriateness of an action in declaratory relief or of a representative or class suit; held the findings were inadequate as to the precise activities of the individual employees and their connection if any with interstate commerce and as to the exact hours and workweeks involved; and remanded the cause for further proceedings. (178 F.2d 603.) The company's petition for writ of certiorari was denied by this Court. (339 U.S. 920.)

In conformity with the decision of the Court of Appeals, the pleadings thereafter were amended to eliminate the representative or class action aspects of the case and the union and its official were dismissed as parties defendant. The number of employee defendants actually involved was reduced to forty-two and the period in controversy was specifically limited to the time between

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November 20, 1946 and September 14, 1947. On the second trial the issues raised by the counterclaim, as well as those raised by the complaint, were tried. The employees thus sought specific money judgments for unpaid compensation for work in excess of 40 hours per week. The company sought to avoid the statutory provisions for overtime pay, claiming that it was exempt from these obligations by virtue of Sections 13(a)(6) and 7(c) of the Act.

The record made at the second trial consisted of the testimony of twenty-two of the employees involved, the testimony of Waialua's general manager, numerous exhibits, and a comprehensive stipulation of undisputed facts. This stipulation set forth in great detail the various and varied operations of the company and the tasks performed by each employee in connection therewith, hour by hour, and week by week during the period involved. The twenty-two employees testified concerning the work performed by each of them individually and personally in the vast enterprise conducted by the company, and the general manager testified as to the departmentalized nature of the business and generally substantiated the stipulation. Thereafter the parties briefed and argued their opposing interpretations of the statutory provisions involved.

Detailed findings of fact were made by the District Court with respect to all of the issues presented. (R. 190-304; see 97 F.Supp. at 201-218.) As contrasted with its criticism of the findings made at the first trial, the Court of Appeals described the findings now before this Court in this way:

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> "The findings before us are now meticulous and exact as to the hours and type of work performed by each worker defendant during each work week in question." (216 F.2d at 471.)

These findings contain, as to each employee in each of the workweeks in controversy during the period of time covered by the litigation, a detailed description of the work performed by the employee, the number of hours worked by him, his regular hourly rate of pay, whether he had received overtime compensation for hours of work in excess of 40, whether he was exempt under either Section 13(a)(6) or Section 7(c), and the amount of unpaid overtime compensation, if any, which the company owed him.[4]

The "meticulous and exact" findings of the District Court show that:

Waialua operates a sugar plantation on the island of Oahu in the Territory of Hawaii, engaged in the growing, cultivating, and harvesting of sugar cane; it operates a mill at which it processes the sugar cane into raw sugar and molasses, at which it bags the raw sugar, and from which it loads and ships the raw sugar to the refinery in the United States. From the mill it also loads and ships molasses in bulk to the United States.

Waialua is the third largest producer of raw sugar in Hawaii, and in the year prior to the suit produced over 56,000 tons of raw sugar.[5] At the time of trial

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[4]Appended hereto are detailed excerpts from the trial court's findings as to each employee.

[5]The Territory itself produces between 10% and 13% of the world's sugar supply.

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the company was producing sugar cane on 9,663 acres of land, all owned by it. There were 1,144 persons in its employ on September 1, 1946.

To transport the sugar cane from the fields to the plant where it is manufactured into raw sugar, Waialua uses its own modern railroad system consisting of 56 miles of railroad track, 10 locomotives, and 712 cane cars. A complete roundhouse is maintained for servicing this equipment. The investment in this railroad system amounts to nearly $800,000. The men employed on this railroad system are typical railroad employees—engineers, repairmen and section hands.

The manufacturing plant and mill is highly mechanized, consisting of a cane cleaning plant, a cane crushing room, a boiling room, and a bagging room. This plant is located in a yard area separate and distinct from the growing fields. It is an industrial type plant with efficient modern machinery adapted for the purpose of converting sugar cane into raw sugar and molasses. During the approximately three months of each year when the plant is closed down for repairs to machinery, no processing operations are conducted.

Waialua also maintains complete and physically separate warehouses and shops for the repair and overhaul of field equipment, mill equipment, and equipment used in servicing Waialua Village, the town maintained by respondent to house its employees.[6] The shops include

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[6]At the time of trial, the village consisted of 820 houses, all owned by respondent, together with business establishments necessary to serve the community. On the basis of a census which was completed June 30, 1946, the 820 houses on the plantation

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who is engaged in commerce or in the production of goods for commerce—

. . .

"(3) for a workweek longer than forty hours . . . unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed.

. . .

"(c) In the case of an employer engaged in the first processing of milk, whey, skimmed milk, or cream into dairy products, or in the ginning and compressing of cotton, or in the processing of cottonseed, or in the processing of sugar beets, sugar beet molasses, sugarcane, or maple sap, into sugar (but not refined sugar) or into syrup, the provisions of subsection (a) shall not apply to his employees in any place of employment where he is so engaged;

. . .

"§13. *Exemptions.*

"(a) The provisions of sections 6 and 7 shall not apply with respect to . . . (6) any employee employed in agriculture; . . .

. . .

"§16. *Penalties; civil and criminal liability.*

. . .

"(b) Any employer who violates the provisions of section 6 or section 7 shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, or their unpaid overtime compensation, as the case may be, and in an additional equal amount as liquidated damages. Action to recover such liability as may be maintained in any court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, or such em-

ployee or employees may designate an agent or representative to maintain such action for and in behalf of all employees similarly situated. The Court in such action shall, in addition to any judgment awarded to the plaintiff or plaintiffs, allow a reasonable attorney's fee to be paid by the defendant, and costs of the action."

QUESTIONS PRESENTED.

Petitioner Ciraco Maneja and the forty-one other petitioners are employees of Waialua Agricultural Company, Limited, a corporation. Waialua is located in the Hawaiian Islands where it engages in the large scale production of sugar cane. This it manufactures into raw sugar which is then exported to the mainland. At Crockett, California, the sugar is refined in a plant which Waialua and thirty other Hawaiian sugar producing companies own through the medium of a cooperative association. Thereafter the Association markets the sugar and distributes the profits of the entire operation to the member companies substantially in proportion to the amounts of raw sugar each delivers to the cooperative.

Prior to the institution of this suit, there had been other litigation respecting the application of the Fair Labor Standards Act to the company's employees. The earlier case was settled by a stipulated judgment in favor of the employees entered before trial. (*Takenaka v. Waialua* [D.C. Haw. No. 640].) The controversy continued, however, and in 1947 the company, invoking the jurisdiction of the District Court because the proceeding arose

under an Act of Congress regulating commerce (see 62 Stat. 931; 28 USC 1337), brought suit for a declaratory judgment (see 62 Stat. 964, as amended by 63 Stat. 105; 28 USC 2201) to resolve and terminate the controversy. The employees counterclaimed under Section 16(b) of the Fair Labor Standards Act, seeking compensation for unpaid overtime work claimed due them under the provisions of the Act.

This case was tried twice, the first trial resulting in a remand to the District Court. Upon the last trial, the District Court entered judgment for the employees on the counterclaim. On appeal, the Court of Appeals reversed.

The employees petitioned for certiorari. The question presented by the employees' petition (No. 357) is whether the Court of Appeals erred in reversing the judgment rendered on the counterclaim. Broadly stated, it is whether and to what extent the company is exempt from the overtime pay provisions of the Fair Labor Standards Act of 1938. Directly embraced in this question is the correctness of the holding of the Court of Appeals that none of the employees was engaged in commerce or in the production of goods for commerce, and of its subsidiary ruling that the agriculture exemption deprived each employee of the statutory right to overtime compensation. Also involved is the correctness of the District Court's ruling that the processing exemption applied only to the place where and at the time during which processing was actually taking place, and its ruling that employees who performed some exempt and some non-

exempt work in a given workweek were covered by the Act for that week.[2]

Waialua also petitioned for certiorari. The questions presented by Waialua's petition (No. 358) are whether the Court of Appeals erred in directing a dismissal of the declaratory judgment suit on the ground that the parties were in "apparent collusion", and whether its judgment should be reversed "with directions to review on the merits the issues of statutory construction which were presented by the parties in the record and were determined by the judgment of the District Court."[3]

STATEMENT.

The suit was begun in 1947 by the company for a judgment declaring its obligations under the provisions of the Act. The jurisdiction of the District Court was invoked because the question arose under a law relating to commerce, to-wit, the Fair Labor Standards Act. The original complaint named as defendants certain employees of the company (among them petitioners Maneja, *et al.*), "others similarly situated", the labor union which was the collective bargaining representative of those employees, and one of its officials. The employees, including petitioners Maneja, *et al.*, answered and also filed

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[2]Because the Court of Appeals disposed of the case on other grounds, it did not pass upon these latter two rulings of the District Court. The employees having reserved the points in their petition (pp. 3-4, n. 3) here urge that the District Court's rulings in these respects were correct.

[3]Petition for writ of certiorari in No. 358, p. 3.

operation of a railroad system and a sugar mill—are not agriculture (*Bowie v. Gonzalez*, 117 F.2d 11 [CA 1]), and the mere fact of unitary ownership does not make them so (*Calaf v. Gonzalez*, 127 F.2d 934 [CA 1]; *Vives v. Serralles*, 145 F.2d 552 [CA 1]). The employees do, of course, perform functions which may be "necessary" to agriculture. But like many activities without which agricultural production would not be possible, those functions are not themselves agriculture since they are separate and independent productive operations, organized as such by Waialua. (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.) The mechanics, railroaders and mill workers require different skills and trainings from the field workers, and employees who possess and utilize such skills are not farm hands. The existence of the processing exemption in Section 7(c) of the Act clearly indicates that mill work was not intended to be included within the agriculture exemption of Section 13(a)(6). (*Bowie v. Gonzalez*, 117 F.2d 11 [CA 1].)

3. The carpenters, plumbers, electricians, railroad men and other employees here involved are not engaged in processing. The processing exemption does not apply to those employees or to the employees who repair the mill during the off-season, or who generate steam and electric power. These activities are not the processing of sugar. Certainly, carpentry, welding or railroading are not the processing of sugar and in any case do not occur at the "place" where sugar is processed. (Administrator's Interpretative Bulletin No. 14 [1941 W.H.Man. 320, 323-324]; *Fleming v. Swift & Co.*, 41 F.Supp. 825 [N.D. Ill.], aff'd 131 F.2d 249 [CA 7].) Certainly the production

of power is not the processing of sugar (*Shain v. Armour & Co.*, 50 F.Supp. 907 [W.D. Ky.]; *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785 [D. Minn.]), and the fact that part of the power produced is used in connection with the processing or with the agricultural pursuits of Waialua makes no difference (cf. *Davis v. Goodman Lumber Co.*, 133 F.2d 52 [CA 4]; *Walling v. Connecticut Co.*, 154 F.2d 552 [CA 2]; *Northwest Airlines v. Jackson*, 185 F.2d 74 [CA 8], cert. den. 342 U.S. 812). The work during the off-season, not being performed while any processing is taking place, cannot in any sense be regarded as processing or even incidental thereto. It represents a major overhaul, almost akin to new construction, and is clearly not exempted from the operation of the statute. (*Maisonet v. Central Coloso, Inc.*, 2 W.H. Cas. 753 [D. P.R.].)

4. The employees engaged in servicing the company village are engaged in the production of goods for commerce within the meaning of Section 3(j) of the Act, since their work has such a close and immediate tie with the process of production as to be an essential and necessary part of it. (*Kirschbaum v. Walling*, 316 U.S. 517; *Borden Co. v. Borella*, 325 U.S. 679; *Martino v. Michigan Window Cleaning Co.*, 327 U.S. 173.) The unavailability of other housing, the furnishing of accommodations in order to assure a stable labor force, and the failure to operate the village as a separate profit-making venture, all point to this conclusion. (*Consolidated Timber Co. v. Womack*, 132 F.2d 101 [CA 9]; *Hanson v. Lagerstrom*, 133 F.2d 120 [CA 8].)

The categorical assertion of the Court of Appeals that "* * * agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in the constitutional sense" (216 F.2d at 476) cannot be squared with the decisions of this Court. The reliance of the Court of Appeals (216 F.2d at 476, n. 32) upon *United States v. Butler*, 297 U.S. 1, is vitiated by its own implied recognition in the very same footnote that the later case of *Wickard v. Filburn*, 317 U.S. 111, is to the contrary. Even before the *Wickard* case, and despite the fact that the *Butler* decision was urged upon it, this Court held in *Mulford v. Smith*, 307 U.S. 38, that marketing of tobacco in excess of established quotas (and therefore its production) could be controlled by Congress in the exercise of its commerce power.

In *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755, this Court held that the field employees—ditch riders, lake tenders, and maintenance men—of an irrigation company providing water for farmers who produced agricultural commodities which later moved across state lines were themselves engaged in the production of goods for commerce.

The holding of the Court of Appeals that petitioners Maneja, *et al.*, who are not farmhands, but are full time locomotive engineers, flagmen, railroad maintenance workers, mill workers, plumbers, carpenters, welders, electricians, power plant operators, laboratory technicians, and clerical workers, are not engaged in commerce or in the production of goods for commerce is therefore clearly erroneous. It is flatly contrary to the record; is in

conflict with the clear language of the statute,[11] and flies directly in the face of this Court's decisions.[12]

In the landmark cases involving this statute, this Court gave the statutory definition of commerce a scope sufficiently broad to enable the legislation to meet the evil which Congress sought to remedy. (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564; *Roland Electric Co. v. Walling*, 326 U.S. 657; *Alstate Construction Co. v. Durkin*, 345 U.S. 13.) These rulings have been applied in cases dealing with employees of meat processors (*Rutherford Food Corporation v. McComb*, 331 U.S. 722), and of cooperative irrigation companies furnishing water

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[11]Section 3(b) of the Act defines commerce as "trade, commerce, transportation, transmission, or communication among the several states or from any state to any place outside thereof."

Section 3(c) reads:

> "'State' means any State of the United States or the District of Columbia or any Territory or possession of the United States."

Section 3(j) read, at the time herein involved:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purpose of this chapter an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any process or occupation necessary to the production thereof, in any State."

[12]That part of the holding of the Court of Appeals, affecting a small minority of employees, that the village service workers were not "engaged in commerce or in the production of goods for commerce", is, petitioners concede, not directly contrary to any specific decisions of this Court. The issue respecting these workers is discussed below at pp. 61-71.

a machine shop, a welding shop, a blacksmith shop, a tinsmith shop, a shop for the repair of caneloading machines, a tractor repair shop, a garage, an electric shop, a carpenter shop, a paint shop, and a plumbing shop. The men employed in these activities are qualified machinists, welders, electricians, painters, carpenters, etc., devoting their full time to their crafts.

A separate plant is also engaged solely in the production of concrete products used in the fields, mill and village.

Waialua's business does not consist of just one operation; it consists of a number of different operations. As reflected by its financial, accounting, cost and personnel records, the company has long been divided into the following separate departments, each performing specialized production functions:

1. Field Department—having to do with the growing of cane and delivering it to the railroad cars.

2. Factory Department—having to do with the manufacture of cane into raw sugar.

3. Service Department—having to do with railroad and truck transportation and the various repair shops.

4. Village Facilities Department—having to do with the upkeep and maintenance of Waialua Village.

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were occupied by 3373 persons. Of the 969 non-supervisory employees in Waialua's employ at the time of trial, all but 16 lived in the village. All of the 22 employees who testified at the trial lived in Waialua Village. Two of them were born there and had never lived any place else. The employees paid for and received housing, housing maintenance, water, fuel, medical care, recreational facilities, and various maintenance services such a garbage disposal and street cleaning.

In addition there are a number of smaller departments such as office, laboratory, agricultural control, etc.

The work of Waialua's employees consists of the following:

1. Preparation of the soil for the planting of sugar cane, planting the seed, cultivating and fertilizing the soil, irrigating, harvesting the crop, loading the crop into railroad cars and hauling them over portable tracks to the main line tracks for transportation to the mill. Since sugar cane is grown in Hawaii on a year round basis, the fields are always in various stages of production or preparation, and the employees who work in the fields move from area to area depending upon the progress of the agricultural program. Employees performing such tasks only were held by the District Court to be excluded from the coverage of the Act as "agricultural" workers, and none of them are involved in this proceeding.

2. Operation and upkeep of the railroad system, and unloading the cars at Waialua's processing mill. For example, petitioner Sera is a section hand on the railroad. He repaired railroad tracks of the main line railroad by replacing worn equipment such as rails, spikes and ties; cleaned and lubricated switches on the main line railroad; maintained rights-of-way of the main line railroad by weeding and cutting trees; graded and leveled uneven sections of trackway on the main line railroad; installed and removed field switches for connecting main line railroad to cane field portable track lines; assisted in clearing train wrecks and repairing derailed locomotives and cars; loaded railroad ties on freight cars in

mill yard; directed traffic as a flagman at railroad crossing of main line railroad. (R. 208-210.)[7] Petitioner Holmberg is a locomotive engineer devoting his full time to this craft, except for a few hours spent in repairing the railroad equipment. Petitioner Okouchi is flagman at railroad crossings, and also does maintenance work along the railroad right-of-way.

3. Working as mechanics, carpenters, welders, blacksmiths, tinsmiths, electricians, painters and plumbers engaged in the maintenance of field, mill and village installations and equipment. For example, petitioners Claunan and Ezawa are mechanics engaged solely in mechanical repair work. Claunan's work as a mechanic consisted of repairing trucks and automobiles in the garage; occasionally repairing concrete products plant equipment, mill equipment, air compressors, equipment used in maintaining the domestic sewer and domestic water supply system in the plantation village, and garage equipment. (R. 220-223.) Petitioner Sunahara as a welder attached to the welding shop repaired the following types of equipment: stable equipment, cane cars, locomotives, mill equipment, equipment for garage, equipment at bathhouse, rolling stock, machine used to plant cane seed, service station equipment, fireroom equipment, hand truck, warehouse building, machine shop equipment, irrigation flume forms, laboratory equipment, herbicide station equipment, stoneboat sled, tractors, electric transmission lines, plows, dwellings, power plant equipment, electrical

[7]Detailed descriptions of the work of all of the employee-petitioners which was held by the District Court to be covered under the provisions of the Act are set forth in the Appendix hereto.

supply system maintained at plantation village for servicing dwellings, hospital equipment, equipment used for maintenance of plantation roads, equipment of plantation irrigation system, fire protection equipment, portable track, trucks, and he also made improvements for dwellings of Waialua's employees. (R. 223-226.) Petitioner Tanaka as a machinist worked solely in the machine shop machining parts for all type of field, transportation, mill and village equipment maintained by respondent. Petitioner Takata is a blacksmith working as such on all types of equipment. Petitioner Sakai is a painter, Kashiwabara a plumber, Mori a carpenter.

4. Operation of the machinery at the cane processing mill where the cane is manufactured into raw sugar for shipment to the mainland refinery, and the repair and replacement of the mill machinery during the annual three months shutdown period. For example, petitioner Oato operates one of the evaporator stations in the mill and performs mill repair work during the period the mill is shut down.

5. Production of steam and electricity for use in the processing mill, the fields, and Waialua Village. For example, petitioner Robello started, operated and stopped generating units; operated switchboard equipment; kept a log of powerhouse operations; made repairs and adjustments to all power plant equipment; supervised equipment which showed the interchange of power between the plantation and the Hawaiian Electric power systems; started, stopped, serviced and repaired air compressors; cleaned and repaired power plant equipment. (R. 218-220.)

6. Working as chemists, clerks and laboratory technicians in connection with the horticultural and manufacturing activities of the respondent. Petitioner Pacheco is employed in the laboratory preparing cane leaves for chemical analysis under the supervision of a chief chemist.

7. Working as carpenters, woodcutters, janitors, street cleaners, road graders and other service personnel in connection with the maintenance of the respondent's town. Petitioner Yamada is attached to the carpenter shop and repairs dwellings in the village. Petitioner Crisostomo operates and repairs a grader used to maintain village roads. Petitioner Fernandez is a village cleaner working on the maintenance and upkeep of employees' houses in the village.

Petitioners Maneja, *et al.* constitute a cross-section of Waialua's employees engaged in all the foregoing activities with the exception of those engaged solely in the work of the Field Department. Those employees are not involved in this case.

After making these detailed findings of fact (R. 190-304), the trial court drew its conclusions of law in substance as follows (R. 304-307):

1. That the court has jurisdiction over the cause of action and the parties.

2. That each of the employees was, while engaged in any of the foregoing activities, engaged in commerce or in the production of goods for commerce, as defined by Sections 3(b) and 3(j) of the Act. (See 97 F.Supp. at 218-219.)

3. That those of the employees who were engaged directly or indirectly, in planting, irrigating, or preparing the soil for planting, or in harvesting, or in hauling the sugar cane from the fields to the corporation's main line railroad tracks, were exempt from the provisions of the Act because they were engaged in "agriculture" within the meaning of Section 13(a)(6) of the Act. (See 97 F. Supp. at 219-220.) For this reason the claims of a number of employees to overtime compensation were denied. Those employees did not appeal to the Court of Appeals. The judgment as to them became final and they are not involved in this proceeding.

4. That those of the employees while, and to the extent that, they were engaged in the refining process at and in the mill, were subject to the processing exemption of Section 7(c) of the Act. (See 97 F.Supp. at 222-223.) For this reason, an additional number of employees were denied overtime compensation during workweeks in which they were so engaged.[8] These employees did not appeal to the Court of Appeals; however, Waialua did, urging that the basis of exemption should have also been Section 13(a)(6).[9]

5. That those employees performing the other types of work heretofore described were entitled to receive overtime compensation in accordance with the provisions of the Act. (See 97 F.Supp. at 218 ff.)

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[8]However, the trial court refused to adopt Waialua's contention that the agriculture exemption applied to these employees.

[9]The question of which is the appropriate exemption is therefore still in the case as to eight petitioners: Hernandez, Dumlao, Kondo, Cumlat, Lazo, Kubo, Hamamoto, and Oato.

6. In those instances where an employee, in a particular workweek, performed some exempt and some non-exempt work, the court held that he was entitled to the benefits of the Act for such workweek. (See 97 F.Supp. at 232.)

A money judgment was entered in favor of those employees held entitled to overtime compensation in amounts ranging from $30.94 to $174.12, plus equivalent amounts as liquidated damages under 16(b) of the Act. The total judgment was $6,729.02. Attorneys' fees in the sum of $2,500 were also assessed.

Thus the District Court's judgment disposed of all claims and issues raised in the company's suit for declaratory judgment and in the employees' counterclaim under Section 16(b) of the Act.

Waialua appealed.

The Court of Appeals reversed because of a claimed "error in approach". (216 F.2d at 468.) It ordered Waialua's complaint dismissed and remanded the counterclaim to the District Court "for proceedings in accordance with this opinion." (216 F.2d at 478.) While in its opinion on rehearing the Court of Appeals said that it had "held that the entire cause was tainted by apparent collusion",[10] it refused to dismiss the counterclaim and said that the employees "may take further proceedings as suggested in the latest opinion of the court". (216 F.

[10]The court's conclusion in this respect appears to be based upon the facts that (1) the parties did not contest "commerce coverage" in this case, and (2) the parties stipulated as to the *facts* respecting the company's operations and the work performed by the employees.

2d at 479.) In that opinion the Court of Appeals said (a) that none of the employees was entitled to the benefits of the Act because none of them was engaged in commerce or in the production of goods for commerce, and (b) that all of the employees were excluded under the agriculture exemption of Section 13(a)(6). (216 F.2d at 468-478.)

SUMMARY OF ARGUMENT.

1. The growing of raw sugar, its transportation to the mill, its manufacture there into raw sugar, its shipment to the United States for refining at the cooperative, and its distribution and sale throughout the nation is the production of goods for interstate commerce within the meaning of Section 3 of the Act. (*Mulford v. Smith*, 307 U.S. 38; *United States v. Darby*, 312 U.S. 100; *Wickard v. Filburn*, 317 U.S. 111; *Rutherford Food Corp. v. McComb*, 331 U.S. 722; *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.)

2. The employees engaged in the repair and maintenance activities—those engaged in the carpenter shop, the plumbing shop, the electrical shop, the welding shop—are not engaged in agriculture within the meaning of the 13(a)(6) exemption. Neither are the employees engaged in the operation of Waialua's railroad system and those engaged in the operation of its mill. The test is what the employee actually does, not how the employer's business may be characterized. (*Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564.) The activities of the employees here involved—the

5. An employee is entitled to be paid at the statutory overtime rate for all work performed by him in any workweek in which any non-exempt work is performed. The unit of measurement under the statute is the "workweek". (*Overnight Motor Transport Co. v. Missel*, 316 U.S. 572; *Shain v. Armour & Co.*, 50 F.Supp. 967 [W.D. Ky.]; *Walling v. DeSoto Creamery & Produce Co.*, 51 F.Supp. 938 [D. Minn.]; cf. *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446; *Wabash Radio Co. v. Walling*, 162 F.2d 391 [CA 6].)

6. The case presents a real and substantial controversy between the parties respecting Wailaua's liability to pay overtime compensation at the statutory rate to the employees here involved. This controversy may be resolved either by a suit for declaratory relief (28 USC 2201) (*Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227; *Tennessee Coal etc. Co. v. Muscoda Lodge*, 321 U.S. 590), or by a suit under Section 16(b) of the Act. The suit is not rendered collusive because the parties agreed that Waialua was engaged in interstate commerce and stipulated to the undisputed facts respecting the operations on its "plantation" in Hawaii. (*Lord v. Veazie*, 8 How. 251.) There can be no question of commerce coverage here. (*Santa Cruz Fruit Packing Co. v. NLRB*, 303 U.S. 453; *Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111; *Farmers Reservoir & Irrigation Co. v. McComb*, (337 U.S. 775), and certainly stipulations respecting facts do not render collusive, suits involving important questions of statutory construction. (*Lord v. Veazie*, 8 How. 251; *Kirschbaum v. Walling*, 316 U.S. 517; *Rutherford Food Corp. v. McComb*, 331 U.S. 722.) Com-

plete findings of fact having been made by the District Court (97 F.Supp. 198; 216 F.2d 466, 471), and the Court of Appeals having reversed because it disagreed, not on the facts, but on the law (216 F.2d 466), the entire controversy is ready for decision by this Court and the questions of statutory construction here presented should be finally determined now.

7. The Fair Labor Standards Act is an expression of important and significant national policy the aim of which is to increase the living standards of American men and women by excluding from interstate commerce goods produced at standards below those prescribed by the statute. (*United States v. Darby*, 312 U.S. 100; *Kirschbaum v. Walling*, 316 U.S. 517; *Roland Electric Co. v. Walling*, 326 U.S. 657.) For that reason the statute is to be interpreted in favor of broad coverage and all exemptions are to be narrowly construed. (*Phillips Co. v. Walling*, 324 U.S. 490.)

ARGUMENT.

I.

THE HOLDING OF THE COURT BELOW THAT NONE OF PETITIONERS WAS ENGAGED IN COMMERCE OR IN THE PRODUCTION OF GOODS FOR COMMERCE IS ERRONEOUS.

Notwithstanding the undisputed evidence that the end product of the work of petitioners, namely, raw sugar, was all shipped from Hawaii to the mainland, the Court of Appeals, reversing the findings of the District Court, held that none of the petitioners was engaged in commerce or in the production of goods for commerce.

to farmers. (*Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.)[13]

This Court, in dealing with the analogous Agricultural Adjustment Act, 52 Stat. 31, 7 USC 1281, *et seq.*,[14] has held that the employees of growers of tobacco and wheat are engaged in interstate commerce. (*Mulford v. Smith*, 307 U.S. 38; *Wickard v. Filburn*, 317 U.S. 111.) Similarly, in dealing with the Agricultural Marketing Agreement Act of 1937, 50 Stat. 246, 7 USC 601, *et seq.*, this Court has held employees of milk processors to be engaged in interstate commerce. (*United States v. Wrightwood Dairy Co.*, 315 U.S. 110.)

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[13]The court below appears to doubt the soundness of this Court's decision in the *Farmers Reservoir* case, *supra*.

> "It is true that the majority [of the Supreme Court in the *Farmers Reservoir* case] unfortunately accepted the acquiescence of the parties as establishing the constitutional and jurisdictional factor that the employees of a local irrigation company were engaged in a 'process or occupation necessary for the production of goods for commerce.' Thereby the long-standing principle of decision that a constitutional and jurisdictional issue will not be debated or considered unless actively raised by the parties was abandoned. Nor can we accept as an explanation that rationalization leads to quaint results." (216 F.2d at 476-477.)

Whatever this last sentence may mean, it is clear that the court below was in error in suggesting that this Court abandoned a "principle of decision" in the *Farmers Reservoir* case. (See *infra*, pp. 78-81. And even if it thought it were not in error on the point, it should not have undertaken in effect to reverse this Court's decision.

[14]"The Fair Labor Standards Act . . . is part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . . Decisions that define the coverage of the employer-employee relationship under the Labor and Social Security Acts are persuasive in the consideration of a similar coverage under the Fair Labor Standards Act." (*Rutherford Food Corporation v. McComb*, 331 U.S. 722, 723.)

In *Bouie v. Gonzalez*, 117 F.2d 11 (CA 1), it was held that employees of employers who grow sugar cane in Puerto Rico, who operate mills in which the cane is ground, and who deliver the ground cane for transportation to points outside of Puerto Rico, are engaged in interstate commerce. In fact, the court there said that the proposition that such workers are engaged in commerce "is too clear for argument". (117 F.2d at 15.)

The same court in a later case had "no difficulty in holding that insofar as the employees are engaged in the transportation of sugar cane from the farm . . . and are engaged in the repair and maintenance of transportation facilities, they are covered by the Act". (*Calaf v. Gonzalez*, 127 F.2d 934, 936 [CA 1].) Nor have District Courts had any difficulty in finding the Act applicable to employees of employers engaged in such activities as the dehydrating of alfalfa (*Wyatt v. Holtville Alfalfa Mills*, 106 F.Supp. 624 [S.D. Cal.]) and the curing and packing of tobacco. (*Durkin v. Budd*, 114 F.Supp. 865 [N.D. Fla.].)

In Interpretative Bulletin No. 1 issued shortly after the Act was passed in 1938, the Administrator considered the general coverage of the statute (1944, W.H. Man. p. 16) and, after reciting the congressional declaration of policy,[15] said:

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[15] "In the preliminary declaration of policy in Section 2, Congress recited that it sought to remedy certain evils, namely, 'labor conditions detrimental to the maintenance of the minimum standard of living necessary for health, efficiency, and general wellbeing of workers,' which Congress found '(1) causes commerce and the channels and instrumentalities of commerce to be used to perpetuate such labor conditions among the workers of the several States; (2) burdens commerce and the free flow of goods in com-

"From this declared policy of Congress, it is evident that, apart from certain specific exemptions enumerated later in the statute, Congress intended the widest possible application of its regulatory power over interstate commerce; and the Administrator, in interpreting the statute for the purpose of performing his administrative duties, should properly lean toward a broad interpretation of the key words, 'engaged in commerce or in the production of goods for commerce.'" (1944 W.H. Man. at 17.)

As we have seen, this Court in the cases which subsequently came to it confirmed the administrator's interpretation of the scope of the commerce provisions of the Act.[16]

These interpretations of the administrator—to which we will also refer in subsequent portions of this brief—are, while not controlling, entitled to the greatest of weight. *United States v. American Trucking Ass'n.*, 310 U.S. 534; *Roland Electric Co. v. Walling*, 326 U.S. 657, 676.

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merce; (3) constitutes an unfair method of competition in commerce; (4) leads to labor disputes burdening and obstructing commerce and the free flow of goods in commerce; and (5) interferes with the orderly and fair marketing of goods in commerce.'" (1944 W.H.Man. at 17.)

[16] *Supra*, p. 25.

II.

THE AGRICULTURE EXEMPTION DOES NOT APPLY TO (1) THE REPAIR AND MAINTENANCE MEN IN THE CARPENTER, PLUMBING, ELECTRIC, WELDING AND OTHER SHOPS, AND (2) THOSE EMPLOYEES WHO OPERATE AND MAINTAIN THE COMPANY'S MILL OR ITS RAILROAD SYSTEM.

The Court of Appeals excluded the employees here involved from the benefits of the Act, on the theory that they were "employed in agriculture"; yet the record is clear that those employed were, *inter alia*, carpenters, plumbers, welders, electricians, locomotive engineers and repairmen, section hands, operators of various types of heavy machinery, loaders, clerks, and the like—most of whom never, in the weeks for which they were awarded overtime pay by the District Court, performed farm labor.[17] The basis of the reasoning of the Court of Appeals appears to be that Waialua is a "farmer" and that therefore, irrespective of anything else, its employees should be denied their rights under the statute.

But Waialua is not a "farmer". Waialua operates a variety of establishments on its plantation in Hawaii. While it operates a farm, it also operates a factory (mill), a railroad, repair and maintenance shops, and a company village. Just because some of its employees are engaged in farming does not mean that those not so engaged—the carpenters, or the welders, or the electricians, or the railroad workers—should be denied the benefits of the overtime provisions of the Act.

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[17] Those who did sometimes work as farm hands were denied overtime compensation for those workweeks in which they were exclusively so employed.

We discuss the "commingled" workweek at pp. 71-75, *infra*.

The exemption upon which the company relies, relates to "any *employee* employed in agriculture" (Section 13[a][6]) and the test of its applicability is the character of the *given employee's* work, not what some other employee may be doing or how the employer's business may be characterized. *Kirschbaum v. Walling*, 316 U.S. 517; *Walling v. Jacksonville Paper Co.*, 317 U.S. 564. The Act was very carefully drawn to specify those situations in which the exemption is dependent upon the type of *employer* involved [Sections 13(a)(4), 13(a)(9), 13(b)(2)], and those in which, as here, it is dependent upon the duties of the *employee* [Sections 13(a)(1), 13(a)(3), 13(a)(5), 13(a)(6) and 13(a)(10)]. Here as to each one of the forty employees involved, it must be separately determined whether *he or she* is "employed in agriculture".

The District Court, for reasons already indicated, held that as to the workweeks involved in this proceeding, these employees were not so employed.[18] It is submitted that the District Court was correct and that its judgment must be affirmed.

Agriculture is defined in Section 3(f) of the Act as including:

> ". . . farming in all its branches and among other things . . . the cultivation and tillage of the soil, . . . the production, cultivation, growing, and harvesting of any agricultural or horticultural commodities . . . and any practices . . . performed by a

[18]The Appendix contains a detailed listing abstracted from the findings of the District Court which shows the kind of work, employee by employee, which that court held to be non-exempt. It seems perfectly obvious that persons engaged in the type of work there described are not "employed in agriculture".

farmer or on a farm as an incident to or in conjunction with such farming operations, including the preparation for market, delivery to storage or to market, or to carriers for transportation to market."

The District Court held that the exemption of Section 13(a)(6) was applicable to employees engaged in all activities beginning with the preparation of the land for planting and ending after the harvested cane had been hauled to the mainline railroad. Included in the activities so held exempt from the overtime provisions of the Act were not only the actual planting, cultivating and harvesting of the crop, but also such activities as using tractors to clear the fields for planting; weeding; plowing; using tractors to clear irrigation ditches; using tractors to make beds for portable railroad tracks; burning cane in preparation for harvesting; operating caneloading machines to cut and load cane into cane cars; operating tractors to haul cane cars to and from the mainline railroad; picking up scattered cane in fields; bulldozing cane into piles; making minor repairs to field equipment; and operating the irrigation system.

Conversely, the District Court held that the exemption contained in Section 13(a)(6) did not apply to employees engaged in any activities which occurred subsequent to the receipt at the mainline railroad of the cars loaded with cane. Specifically, the District Court held that the agriculture exemption did not apply to employees who engaged in the operation of the mainline railroad, e.g., the locomotive engineer, the locomotive repair man, the section hand, the crossing watchman; or in the operation of the processing mill, e.g., the cane cleaner, the

crushing plant operator, the evaporator operator, the centrifugal machine operator, or the boiling house employee; or in the bagging and warehousing of sugar, e.g., the bagger and loader, the warehouse clerk; or in the operation of the utility plant, e.g., the boiler fireman, the power plant operator; or in the performance of maintenance and repair work, e.g., the automobile mechanic, the welder, the machinist, the tractor mechanic, the cane-loading machine repair man, the blacksmith, the painter, the concrete products operator, the plumber, the carpenter; or in the performance of such miscellaneous occupations as clerk-stenographer, truck driver, road grader, laboratory technician, and utility clerk.

The view of the District Court was concurred in by the Secretary of Labor who is charged with the duties and responsibilities of administering the Act.[19]

The Court of Appeals, however, was of the view not only that "agriculture . . . is not commerce", but also that even if it were, all of the employees of Waialua were exempt from the overtime pay provisions of the Act by virtue of Section 13(a)(6). In other words, the Court of Appeals was of the view that all of the employees engaged in the operation and maintenance of Waialua's sugar mill, repair shops, railroad facilities and village community were engaged in agriculture.

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[19]This position has been consistently taken by the Administrator since 1941 when a written ruling on the subject was promulgated. "It would seem from the Court's decision [*Bowie v. Gonzalez*, 117 F.2d 11 (CA1)] that the exemption for agricultural employees provided by the Wage and Hour law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his field." (1944-45 W.H.Man. 564, note.)

Since the ultimate, and indeed the sole, object of Waialua's operation is the production of sugar and molasses, and since these commodities are manufactured at the mill, it may be more forcefully argued that the operation of the mill is the dominant element and that the growing of the sugar cane is only subordinate or incidental. Therefore it follows that Waialua is not a "farmer" at all but is a manufacturer and none of its employees are engaged in agriculture. This view is reinforced when it is realized that in reality the ultimate objective of all of Waialua's activities is the refining of the raw sugar at the cooperatively owned refinery in California and its subsequent sale from that place. However, we need not rely on this argument, forceful as it is, since it is enough to assert that in order to accomplish its ultimate objective of producing sugar and molasses, Waialua engages in many separate and distinct enterprises appropriate to that end. These enterprises include manufacturing, repair and maintenance, and transportation, in addition to farming. It is only with the employees engaged in the former enterprises that we are here concerned. The fact that Waialua has placed all these separate economic functions under one ownership cannot conceal the essential non-agriculture character of its manufacturing, maintenance and transportation activities, nor submerge the fact that it operates a hybrid type of business in which it functions not only as a farmer but also as a manufacturer, a general repair and maintenance contractor, a railroader, and an operator of a substantial company village.

That Waialua does function in this way is manifest from the record. Its acreage includes in addition to a

farm, a manufacturing plant, repair shops, transportation facilities and a company village. These non-agricultural operations are conducted so as to "assume the character of a distinct business enterprise of an industrial nature". (97 F.Supp. at 22.) They are conducted in buildings separate, and in an area distinct, from the growing fields and they account for a substantial portion of Waialua's operating charges. The actual separation of functions is demonstrated in a variety of ways. The areas allotted to farming are distinct from those allotted to processing or maintenance or railroading. Organizationally the functions are separated: the farming operations are performed through a Field Department headed by a Field Superintendent; the processing, railroading and repair operations are performed through a Factory and Shop Department headed by a Factory Superintendent. Waialua segregates its operating charges into cultivating, irrigating, harvesting, general field expense, transportation, and manufacturing items. The mill and railroad are operated by separate work forces which do no work in the field.[20]

This analysis of Waialua's operations is not only supported by the record, but parallels this Court's holding in *Farmers Reservoir and Irrigation Co. v. McComb*, 337 U.S. 755. In that case, which clearly supports the view

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[20]The fact that some field workers occasionally work in the mill is of no significance since the issue with respect to each employee here involved revolves about the type of work that employee performed in a given workweek. When a field worker temporarily becomes a mill hand, he is entitled to the benefits of the overtime pay provisions of the statute. And vice versa, should a mill hand work exclusively as a field laborer, he would derive none of those benefits.

of the District Court and the Secretary of Labor, this Court held that the employees of a mutual irrigation company owned by farmers, and which distributed water to their individual farms, were not exempt under Section 13(a)(6).

In reaching its conclusion this Court analyzed the exemption as follows:

> "First, there is the primary meaning. Agriculture includes farming in all its branches. Certain specific practices such as cultivation and tillage of the soil . . . are listed as being included in this primary meaning. Second, there is the broader meaning. Agriculture is defined to include things other than farming . . . It includes any practices, whether or not themselves farming practices, which are performed either by a farmer or on a farm incidentally to or in conjunction with 'such' farming operations." (337 U.S. at 762-763.)

Clearly, Waialua's processing employees who are engaged in manufacturing, its transportation employees who run its railroad, its maintenance employees—carpenters, plumbers, welders, and electricians—are not engaged in farming within the primary meaning of the Section 13(a)(6) exemption. One would have to ignore the undenied facts to hold that such persons are excluded from the benefits of a statute the exemption from which deals with the cultivation, growing and harvesting of agricultural products.[21]

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[21]The argument, made by Waialua below, that because the railroading or processing exemptions were "necessary" to the agriculture operation (an assumption which is questionable at best), the former are a "part" of agriculture has been rejected by this

Nor do those employees come within the so-called "broader meaning" because neither of the conditions therein is here satisfied. That is to say, Waialua does not perform its manufacturing, railroading, repair and village maintenance operations in its capacity as a farmer or on its farm, nor are such operations performed as an incident to or in conjunction with its farming operations. For the fact of the matter is that the milling and railroading and related activities are not performed on the farm, but in areas clearly set aside for those purposes. Nor are they performed by a "farmer" in the accepted sense of the word; rather they are performed by an employer who, while he engages in farming on the one hand, engages in large scale manufacturing and railroading operations on the other.

An apt analogy would appear to be that of an employer who manufactured cotton goods in a factory located on a farm which the same employer owned and on which cotton was grown. If Waialua's argument is sound, then the employees in the factory who process the raw cotton into cloth would be exempt because the operation was performed by a "farmer", on its "farm", or at least because it was "incidental" to farming. Certainly there is nothing in the Act to countenance such a result.

Court. A substantially similar argument was made in the *Farmers Reservoir* case and the court said of it that it was based upon a "misconstruction" of Section 3(j) of the Act.

> ". . . the conclusion that work is *necessary* to agricultural production does not require us to say it *is* agricultural production . . . The question here is whether the occupation of the field employees of the company can itself be termed agriculture. The answer to that question is not predetermined by the fact that the occupation . . . has a necessary connection with agricultural production." (337 U.S. at 759-760; italics by the Court.)

Another analogy is suggested by those chain store corporations which operate on both a wholesale and a retail level. Since the Act provides (Section 13[a][2]) an exemption for employees of retail, but not wholesale, establishments, problems have arisen respecting the employees in the central offices and warehouses of such corporations.

In *Phillips v. Walling*, 324 U.S. 490, 495, for example, this Court recognized that "in a realistic sense" most such organizations are "institutions . . . of a hybrid retail-wholesale nature. *They possess the essential characteristics of both* the retailer and the wholesaler". Since it found that the employees in the central offices and warehouses served the economic function of the wholesaler, rather than the retailer, it denied the exemption.

Just as the central office and warehouse employees of a chain store may not be deprived of the benefits of the Act merely because their services are for the ultimate benefit of the "exempt" retail outlet, so Waialua's employees in its separate repair and service shops, its garage, its manufacturing, railroading, and village maintenance activities cannot be excluded from the coverage of the statute simply because the services of those activities are restricted to the products of its farm.

In *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, this Court recognized that the solution to the question here posed turned largely upon an analysis of the manner in which the employer organized itself to produce the varied tasks which were necessary to accomplish the ultimate end.

> "Whether a particular type of activity is agricultural depends in large measure, upon the way in which that

activity is organized in a particular society. The determination cannot be made in the abstract. In less advanced societies the agricultural function includes many types of activity which, in others, are not agricultural. The fashioning of tools, the provision of fertilizer, the processing of the product, to mention only a few examples, are functions which, in some societies, are performed on the farm by farmers as part of their normal agricultural routine. Economic progress, however, is chracterized by a progressive division of labor and separation of function. Tools are made by a tool manufacturer, who specializes in that kind of work and supplies them to the farmer. The compost heap is replaced by factory produced fertilizers. Power is derived from electricity and gasoline rather than supplied by the farmer's mules. Wheat is ground at the mill. *In this way functions which are necessary to the total economic process of supplying an agricultural product, become in the process of economic development and specialization, separate and independent productive functions operated in conjunction with the agricultural function but no longer a part of it.* Thus, the question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function *or is separately organized as an independent productive activity.* The farmhand who cares for the farmer's mules or prepares his fertilizer is engaged in agriculture. *But the maintenance man in a power plant and the packer in a fertilizer factory are not employed in agriculture, even if their activity is necessary to farmers and replaces work previously done*

by the farmers. The production of power and the manufacture of fertilizer are independent productive functions, not agriculture." (337 U.S. at 761.)

Since Waialua does not perform these non-agricultural operations as a farmer, and since they are not performed on a farm but rather on a separate and distinct non-agricultural portion of the plantation, the exemption does apply. Further, it does not apply since the operations in question are not conducted as an "incident to" or in "conjunction with" the farming operations.

This last requirement—of "incidence" or "conjunction"—is not satisfied merely because the processing, railroading and maintenance activities necessarily occur subsequent to the growing and harvesting of the sugar cane. In the nature of things, processing is performed subsequent to harvesting, and if Waialua's argument is sustained, then the line between agriculture and manufacture will be obliterated, and in the illustration earlier given it may well be that the agriculture exemption would apply to the manufacturer of cloth from cotton on the ground that such manufacture is incident to or in conjunction with a farming operation. Other sections of the Act show a congressional design to treat separately many types of operations which are incident to or in conjunction with farming only in the sense that they are performed upon agricultural commodities subsequent to harvesting.[22]

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[22]For example, Section 13(a)(10) reads: "The provisions of Sections 6 and 7 shall not apply with respect to . . . any individual employed within the area of production (as defined by the Administrator), engaged in handling, packing, storing,

Furthermore, Waialua's transportation and manufacturing activities cannot properly be regarded as being performed in conjunction wih or incident to its farming operations. They occur separately from and subsequent to the farming operations. Their substantial as distinguished from their incidental importance in relation to the farming operation is demonstrated by the fact that the direct operating charges attributable to the manufacturing and transportation alone represent approximately forty per cent of all other charges including those for agriculture. The manufacturing and transportation activities require organization, equipment and skills quite unrelated to farming. A separate work force is employed for the manufacturing operation; it does no work in the fields; it is paid on a different basis from that used for the work force in the fields. In the transportation operation, Waialua employs not farm hands nor mill hands, but skilled railroad operators, whose function it is to handle locomotives and moving cars, not agricultural products, and to maintain railroad beds, tracks, roundhouses, etc., all of which is quite unrelated to farming. Since neither the milling function nor the transportation function is performed in conjunction with or incident to the farming function, it follows that the repair and maintenance of the equipment used in the mills and on the railroad cannot come within the exemption of Section 13(a)(6).

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ginning, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products; . . ."

See also Section 7(c), *supra*, p. 4.

On this phase of the case Waialua argues that because all its varied functions are performed by a single owner, the agriculture exemption applies throughout. But as the Court of Appeals for the First Circuit said in *Calaf v. Gonzalez*, 127 F.2d 934, 938 (CA 1):

> "What we have in the case before us is a mill engaged in the processing of sugar cane and also engaged in the transportation of that sugar cane from farms to mill. There seems to be no rational basis for saying that simply because the ownership of the mill and the farms is in the same hands that, therefore, those employees who are engaged in an activity which is separate and distinct from agriculture are exempt from the provisions of the Act."

The *Calaf* case, squarely in point here, involved precisely the same kind of hybrid operation in Puerto Rico, and arguments similar to those advanced by Waialua here were, with good reason, rejected there.

Waialua argues that every farmer is a "shipper" in the sense that he transports his products from field to storage or to a processor or to market, and that every farmer is a "manufacturer" to the extent that he cans or otherwise processes his produce (Brief in Opposition in No. 357, pp. 13-14), and that therefore these activities should not deprive it of the agriculture exemption. But Waialua fails to recognize that farmers generally do not have the elaborate industrial and railroad facilities found upon Waialua's plantation nor do farmers generally perform their carrying and processing functions through separate departments which employ large numbers of specially skilled craftsmen who do no farming. To apply the agriculture exemption to Waialua's manufacturing

and railroading activities would be to apply to Hawaii a different rule from that which the courts have for many years applied to the sugar producing area of Puerto Rico. *Bowie v. Gonzalez*, 117 F.2d 11 (CA 1); *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1); *Vives v. Serralles*, 145 F.2d 552 (CA 1).

In *Bowie v. Gonzalez*, which was the first case presenting the question of the application of the Section 13(a)(6) exemption to the employees of an employer who grew sugar cane and processed it into raw sugar, the court held that the exemption did not apply to the processing operation. While it is true that in that case a portion of the cane which was processed was grown by growers other than the processor, that difference from the case at bar is relevant only to one of the bases upon which the court ruled. The other two express bases for the court's ruling are clearly applicable here.

The court, referred to the legislative history of Section 13(a)(6), and concluded that the purpose of the exemption was

> ". . . to make certain that independent contractors such as threshers of wheat, who travel around from farm to farm to assist the farmers in what is recognized as a purely agricultural task, should be included within the definition of agricultural exemption . . . See 81 Cong. Rec. 7876, 7888". (117 F.2d at 18.)

Such a basis for holding that the processing of the cane into raw sugar came within the agriculture exemption was not present in the *Bowie* case, nor is it present here.

Secondly, the Court of Appeals recognized that the reason for the creation of the exemption did not apply to the employees engaged in the processing operation.

"Furthermore, it would seem that the employees involved in this case would not fall within the reason for the exemption which was accorded to agricultural employees. The Act was drawn not to include the latter because agricultural labor was not subject to the usual evils of sweatshop conditions of long hours indoors at low rates. Also any attempt to regulate agricultural wages would present a difficult problem since a substantial part of the agricultural worker's income must of necessity be for board and room. The employees in the instant case are typical factory workers or laborers engaged in maintaining industrial facilities. The exemption of agricultural labor from the operation of the Act is not admissible as an argument to exempt labor in an industry from its operation". (117 F.2d at 18.)

This reasoning is also applicable here.

After the *Bowie* decision the Administrator modified a prior opinion which he had issued respecting the application of the 13(a) exemption to sugar mill employees.

"It would seem from the court's decision that the exemption for agricultural employees provided '... the Wage and Hour Law does not apply to sugar mill employees, even if the only cane ground in such a mill is cane grown by the sugar mill owner in his own fields." (1944-1945 W. H. Man. 564, note.)[23]

The Administrator has adhered to this view consistently since 1941. In 1949 the Congress provided (63 Stat. 910, 920) that all past orders, regulations and interpretations of the Administrator were to remain in effect. *Alstate Construction Co. v. Durkin*, 345 U.S. 13, 17.

[23]The propriety of the Administrator's modification of an earlier view in the light of further experience and judicial decision is recognized in *Alstate Construction Co. v. Durkin*, 345 U.S. 13, 16.

In *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1), the court was concerned with the application of the agriculture exemption to employees working in the railroad facilities which were used to transport the cane to the sugar mill. In that case, as already stated, the mill, the railroad and some of the farms on which the cane was grown were all owned jointly by the defendants and, as already noted, despite such common ownership, the exemption was denied. Furthermore, although the railroad transported cane grown on farms owned not only by the employer but by one independent farmer, the court *expressly* refused to base its decision on that narrow ground.

> "We place our decision, however, on the broader ground that the transportation of sugar cane is incident to milling rather than to farming and therefore is not exempt under the Act". (127 F.2d at 936-937.)

Certainly, if the agriculture exemption is not applicable to transportation workers because transportation is an incident to milling rather than to farming, it must follow that the exemption is inapplicable to the mill employees themselves.

The reasoning of these two cases which refused to apply the agriculture exemption to the operation of a main line railroad and to the manufacture of raw sugar, was followed in *Vives v. Serralles*, 145 F.2d 552 (CA 1), where one owner operated *all* the farm lands, the transportation facilities, and the mill. In this case the court reaffirmed the principle of the *Calaf* decision that transportation is an incident to milling rather than to farming, but held that such transportation did not begin until the cane was deposited at storage points alongside the mainline rail

oad. In other words, so much of the transportation s occurred on the portable tracks was in effect held to e part of the harvesting. But once the cane was placed n a position where it could be loaded on cane cars and auled by locomotives over permanent railroad tracks, he court held that the agriculture exemption was no onger applicable. In the case of Waialua, the "concen- ration point" is exactly the same, that is, the point here the cars loaded with raw sugar are deposited along- ide the main line railroad for transportation to the manu- acturing plant. And the reasons which led the Court f Appeals for the First Circuit to fix this dividing line t the place at which the portable tracks met the perma- ent tracks are equally applicable to the case at bar. It eems reasonable and proper to choose this point as the lace where the agricultural activity, including the har- esting, ends. From here on out the product of the soil s handled not by farm employees but by technicians and pecialists, railroad men and mill hands. These employ- es should not be deprived of the benefits of the Act be- ause they are transporting and processing a product of he soil any more than any other railroad employee or ndustrial worker is deprived of the benefits of the Act ecause, upon tracing it back, some connection can be ound between the product which he is transporting or on hich he is working, and its original natural state in griculture.

Thus the National Labor Relations Board has held that he "agriculture" exemption contained in the National abor Relations Act (49 Stat. 449, 29 USC [1940 Ed.] 51 *et seq.*) does not apply to employees of Hawaiian ugar producers engaged in transportation, milling, repair

nd clerical work on the plantations. (*Pepeekeo Sugar Co.*, 9 N.L.R.B. 1532.)[24] Similarly, the District Court for the erritory of Hawaii held as recently as July of 1953 that ne transportation and milling employees of Waialua self were not agricultural laborers within the meaning f the Labor Management Relations Act of 1947 (61 tat. 163, 29 USC 141, *et seq.*) (*Waialua Agricultural Co. United Sugar Workers*, 114 F.Supp. 243.)

Finally, it is perfectly obvious that processing (and ransportation incident to it) is not agriculture, since in ne Act itself there are *separate* and *distinct* exemptions ealing with these two subject matters. If the 13(a)(6) xemption did indeed include the processing of agricul- ural products, there would have been no need or occa- ion to include the 7(c) exemption in the Act.

> "The most convincing argument that the processing of sugar cane into sugar was not included within the term 'agriculture' is found in the provisions of Section 7(c). All the sections relating to exemptions are in pari materia and must be construed together to form a consistent whole, if possible. Section 7(c) exempts from the hours provisions of the Act the processing of sugar cane into sugar. If such processing

[24] "Although the term 'agricultural laborer' is not defined in ne Act, its meaning is not obscure. The guidepost is the ordi- ary meaning of the phrase, that stemming from common usage nd common understanding. The term 'agricultural laborer,' as ommonly understood, refers to a person employed on a farm in ne cultivation of the soil, including the harvesting of crops and ne rearing and management of livestock. Only confusion results rom an extension of the meaning of the phrase 'agricultural la- orer' beyond its customary sense. If the Companies' argument ere accepted, some anomalous conclusions would result: e.g., loco- notive engineers, conductors, brakemen, engine oilers, machinists, elders, bricklayers, service station attendants, toolroom attend- nts, and stockroom clerks employed by the Companies would per- orce become agricultural laborers." (59 NLRB at 1537.)

is included within the term 'agriculture' it would be entirely exempt from the Act and the specific inclusion of such processing in the exemptive provision of Section 7(c) would be unnecessary. But the construction of the word 'production' in Section 3(f) to mean agricultural production is entirely consistent with Section 7(c), which provides specific exemptions for certain detailed processing of agricultural commodities." (*Bowie v. Gonzalez*, 117 F.2d at 17.)[25]

III.

E PROCESSING EXEMPTION DOES NCT APPLY TO THOSE EMPLOYEES (1) WHO OPERATE OR MAINTAIN THE COMPANY'S MAIN LINE RAILROAD, (2) WHO WORK IN THE VARIOUS GENERAL REPAIR SHOPS, (3) WHO GENERATE STEAM AND ELECTRIC POWER, AND (4) WHO REPAIR AND MAINTAIN THE MILL IN THE OFF SEASON.

Section 7(c) provides that:

> "In the case of an employer engaged . . . in the processing of sugar cane . . . into sugar (but not refined sugar) . . . [the overtime provisions of the Act] shall not apply to his employees in any place of employment where he is so engaged."

The District Court held this exemption to be applicable employees who operated the processing machinery in mill and performed activities closely connected there-; the District Court also held this exemption to be

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Not only did Congress recognize the two exemptions as sep- and distinct, but for reasons of policy it treated them dif- ntly. The 13(a)(6) exemption applies to *both* the maximum s *and* minimum wage provisions of the Act; the 7(c) exemp- applies only to the hours (overtime) provisions.

applicable to the employees who repaired and maintained the mill and the mill machinery during the weekend shutdown. Specifically, the processing exemption was held to apply only to employees who performed the following tasks: weighing incoming cane cars at the mill, operating machinery for moving loaded cars into and empty cars out of the mill, coupling and uncoupling cars at the mill, collecting car tickets, regulating the flow of cane through the crushing mills, operating the machinery which boiled and crystallized sugar, operating the machinery which bagged sugar, loading such bagged sugar into boxcars or storing it in warehouses, and cleaning and making minor repairs to boiling house equipment. The Secretary of Labor supported this view of the District Court.

Waialua argued in the Court of Appeals that this exemption should also have been applied to employees who operated the main line railroad which transported the sugar cane into the mill, to employees who repaired and maintained the railroad facilities, to employees who repaired and maintained the mill equipment during the off-season when no processing was taking place, and to employees who generated electricity and power for general use on the plantation.

The Court of Appeals said the arguments of the employees and of the Secretary of Labor on this phase of the case were "rendered immaterial" by its decision. (216 F.2d at 478, n. 45.) Presumably this was because it had already held that "agriculture is not commerce" (*supra*, pp. 23-28) and that in any case the 13(a)(6) exemption removed all of Waialua's employees from the coverage of the Act. (*Supra*, pp. 29-47.)

The District Court's ruling on this phase of the case was so clearly correct that its decision should be affirmed without more by this Court.[26]

On its face, Section 7(c) applies (1) only if the employer is engaged in a described operation (here the processing of sugar cane), and (2) only to those employees who work in the place of employment where the employer is so engaged. Both tests must be met before the exemption applies.

Obvious it is that the exemption is not co-extensive with all of the activities engaged in by the employer who happens also to be engaged in the processing of sugar cane. Otherwise, if an employer engaged in one exempt and many non-exempt activities, all of his employees would lose the benefits of the overtime provisions of the statute. That is not the case. To fall within the exemption the employees must, at the very minimum, be themselves engaged in the exempted operation. In other words, if an employer processed sugar but also engaged in railroading or general maintenance work (as Waialua does here), only those of its employees who had to do with the processing operations as distinguished from the maintenance or the railroading, would meet the first test of the section.

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[26]In its Brief in Opposition in No. 357 (p. 12), Waialua argues that the decision of the Court of Appeals, even though erroneous on other grounds, may be sustained by the "exemption of sugar cane processing in Section 7(c)." Anticipating that such a contention might be made, the employees in their petition for certiorari in No. 357 (pp. 3-4, n. 3) noted the bases upon which they contend that the decision of the District Court was correct and should be affirmed here.

But that is not all. Even such employees must, in order to be deprived of the benefits of the Act, perform their work in the place where their employer is engaged in the exempt activity. If they perform it in some other place, they do not fall within the language of the statute even though their activities at such other place may, in a generally broad sense, be said to be incidental or even necessary to such processing.

In August of 1939 the Administrator issued his Interpretative Bulletin No. 14 (1941 W. H. Man. 314-328) in which he considered the exemptions established by Section 7(c) of the Act. In this connection the Administrator pointed out that the section grants

> ". . . a complete exemption from the hour provisions to employees 'in any place of employment' where his employer is engaged . . . in the processing of . . . sugar cane . . . into sugar (but not refined sugar) or into syrup." (1941 W. H. Man. at 320.)

He further pointed out that the purpose and legislative history of the exemption clearly indicate that unless the employee is employed in the actual "department" where the processing operation is physically carried on, he is not exempt.

> "The determination as to whether all the employees of the employer who are working in the establishment are included in the exemption or whether the exemption applies to only such employees as perform the operations described in the section must be made in the light of the legislative history of Section 7(c). The Congressional debates show that the purpose of this Section was to relieve processors of seasonal agricultural commodities from the hour provisions of

the Act so as to enable them more easily to conduct their operations during peak seasons. It is our opinion, therefore, that only the employees who perform the operations described in Section 7(c) or who perform operations that are so closely associated thereto that they cannot be segregated for practical purposes, and whose work is also controlled by the irregular movement of commodities into the establishment, are covered by the exemption. For example, in the ordinary case, none of the employees in a department separate from the department in which the exempt operations are performed will be exempt. Thus, employees working in the meat-curing or sausage-making departments of a meat packing house will not be within the exemption." (1941 W. H. Man. at 323-324.)

In a case dealing with the Section 7(c) exemption relating to employees engaged in the handling, slaughtering or dressing of poultry or livestock, the court adopted similar reasoning and limited the exemption to those employees only who functioned within the "department" directly engaged in processing. *Fleming v. Swift & Co.*, 41 F.Supp. 825 (N.D. Ill.), affirmed 131 F.2d 249 (CA 7).

"Sec. 7(c) of the Act does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned.

"The term 'place of employment' as used in sec. 7(c) of the Fair Labor Standards Act means *those portions of the plant* devoted by the employer to the handling, slaughtering, or dressing of livestock as those terms are construed herein. In addition to the employees specified in conclusion of law No. 6, any employee whose employment during any workweek is *wholly within the place of employment*, as herein

> defined, and who during that workweek is working *exclusively* in an occupation which is a necessary part of the handling, slaughtering or dressing of livestock, also comes within the exemption of sec. 7(c) of the Act." (41 F.Supp. at 831.)

In *Walling v. Bridgeman-Russell Co.*, 2 W. H. Cas. 785 (D. Minn.), the court was concerned with the application of the 7(c) exemption to an employer engaged in the processing of milk and cream. It said:

> "Section 7(c) does not exempt industries from the overtime provisions of the Act, but only the specific processes therein mentioned.
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> "The term 'place of employment' as used in Section 7(c) of the Act means *those portions of an establishment* devoted by the employer to 'first processing' operations. The section 7(c) exemption is applicable to any employees who perform *exclusively* the operations described in this Section, and any employees who, though not engaged in 'first processing' operations, are engaged *exclusively* in occupations which are a necessary part thereof and perform such duties *in those portions of the premises devoted* by the employer to 'first processing' operations." (2 W. H. Cas. at 790.)

The District Court was obviously correct in holding that employees here involved who were engaged in general maintenance and repair or in the operation of the railroad system were not employed at the "place of employment" where the processing occurred. The carpenters, plumbers, welders and electricians work in shops separate from the mill. The train crews, section hands and watchmen all work along the 56 miles long main line track;

the railroad repair men work in the roundhouse, not the mill. For the same reasons Section 7(c) does not exempt employees who generate power, or work at village maintenance. None of the employees here mentioned engage in processing or any part of it, nor is their work so integrated with it as to be incapable of segregation.

Waialua itself did not treat the repair shop employees as part of its mill operations. Payrolls and cost accounting records for tax purposes show the employees of the repair shop separately grouped from the mill hands. The repair shop employees were not occupationally attached to the mill. The headquarters out of which they worked was in each case a separate structure where they performed the major portion of their work, to which they reported each day, and at which they received supervision and instruction. These buildings were located at various distances from the mill. When occasion required the employees to be elsewhere than in the repair shops, they performed their services for every operation on the plantation and not for the mill exclusively. Generally, most of them did not perform any work inside the mill except during the off-season when processing was entirely suspended to permit major repairs, overhauling, and the installation of new machinery. The repair shop employees were under separate foremen and supervisors from the mill hands. There was no interchange, save possibly during the off-season, of personnel, equipment or materials between the mill and the repair shops. The repair shops constituted self-sufficient units not operated as an incident to any other operation but rather as one of the separate enterprises

jointly conducted by Waialua. If the employees of an independent machine repair shop performed the repair activities here under discussion, they would not be exempt from the provisions of the Act.[27]

Apart from the foregoing there are several employees who, while working in the mill, are not themselves engaged in processing sugar cane. One of them, for example, operates the electric generator in the powerhouse which supplies electric power for "operations throughout the plantation" (R. 218), including of course the covered and non-exempt railroad, roundhouse and office. Another operates the machinery in the fireroom which produces the steam used to power the electric generator and in the mill. Even if such employees are regarded as being employed "in" the place where their employer is engaged in processing sugar cane (because such processing takes place in other rooms in the same building), the District Court was correct in holding the 7(c) exemption inapplicable to them. This is so because their duties also included the production and distribution of power for activities not exempted by any provision of the statute.

Where exemptions are provided for "any employee" of designated types of employers, it has been held that if the employer engages in both exempt and non-exempt activities, his employees whose duties relate to the non-exempt, as well as to the exempt, phase of the business are not deprived of the benefits of the Act. Otherwise,

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[27]The fact that the work was done by employees of Waialua—the single owner of the various enterprises—affords no basis for applying the exemption. Cf. *Calaf v. Gonzalez*, 127 F.2d 934 (CA 1).

as already pointed out, an employer could engage in many assorted businesses and claim exemptions for all of his employees simply because one of the enterprises fell within the language of Section 7(c).

Thus it has been specifically held that employees engaged in the production of steam and electric power are not within the 7(c) exemption. In *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785 (D. Minn.), the court held that this exemption did not apply to employees who, although they worked "in" the same place of employment as others whose activities were exempt, generated steam and power used exclusively for operating equipment and heating and lighting the building where both exempt and non-exempt activities were carried on. Similarly, *Shain v. Armour & Co.*, 50 F.Supp. 907 (W.D. Ky.), also involved the application of the 7(c) exemption to employees "engaged in producing steam, heat and power" for exclusive use in the same building in which exempt and non-exempt processes occurred. The court held the exemption was inapplicable because "Section 7(c) of the Act does not exempt industries as a whole from the overtime provisions of the Act, but only those specific processes therein mentioned". (50 F.Supp. at 911.)

The same principle has been applied to the so-called "employer" exemptions provided in other portions of the Act. For example, *Walling v. Connecticut Co.*, 154 F.2d 552 (CA 2), involved employees engaged in the production of electric power for use by their employer, a local trolley carrier. Since Section 13(a)(9) exempts "any employee" of such an employer, the contention was made

that *none* of the employees were entitled to the benefits of the Act. The court said:

> "Literally, that contention is correct. But it would mean that, no matter in what business, however extraneous to its functioning as a 'local trolley carrier,' defendant engaged, those employed in that extraneous business would be exempt. The policy of the Act, disclosed in its history, precludes the acceptance of such a literal construction."[28] (154 F.2d at 553.)

So, here, the use of part of the power for the operation of the non-exempt railroad and the other non-exempt activities makes the processing exemption inapplicable to the employees here involved.

Another example of the refusal to apply the literal terms of an exemption because to do so would produce a result not fairly within the Act's purpose, is found in *Northwest Airlines v. Jackson,* 185 F.2d 74 (CA 8), cert. den. 342 U.S. 812. There the exemption in Section 13(b)(3) for "any employee of a carrier by air" was held not to apply to employees of such a carrier whose duties related not to such carriage but to other aspects of the employer's business. Similarly, in *Davis v. Goodman Lumber Co.,* 133 F.2d 52 (CA 4), the exemption in Section 13(a)(2) for "any employee employed in any retail or service establishment" was held inapplicable

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[28]Markham v. Cabell [326 U.S. 404], 66 S.Ct. 193; A. H. Phillips, Inc. v. Walling, 324 U.S. 490, 493, 497, 65 S.Ct. 807, 157 A.L.R. 876; Walling v. Jacksonville Paper Co., 317 U.S. 564, 571, 63 S.Ct. 332, 87 L.Ed. 460; Roland Electrical Co. v. Walling, 66 S.Ct. 413; Phillips v. Star Overall Co., 2 Cir., 149 F.2d 416, 420; Collins v. Kidd Dairy & Ice Co., 5 Cir., 132 F.2d 79, 80; Davis v. Goodman Lumber Co., 4 Cir., 133 F.2d 52, 54; Walling v. Peoples Packing Co., 10 Cir., 132 F.2d 236. [Court's footnote.]

to employees working in the manufacturing end of the employer's retail establishment.

> ". . . the employees engaged in the manufacturing business of the Goodman Company were entitled to the protection of the statutory standards, although by far the greater part of the corporation's business consisted of a retail establishment chiefly engaged in intrastate commerce, whose employees were exempt from the wage and hour provisions of the Act. The propriety of applying the Act to a separate and distinct department of an employer's business while recognizing that another part is exempt from the statute, has been recognized in similar situations. Fleming v. Hawkeye Pearl Button Co., 8 Cir., 113 F. 2d 52; Fleming v. American Stores Co., D.C.E.D. Pa., 42 F. Supp. 511." (133 F.2d at 54.)

To the same effect are *Wabash Radio Corp. v. Walling*, 162 F.2d 391 (CA 6), and *Western Union Telegraph Co. v. McComb*, 165 F.2d 65 (CA 6), cert. den. 333 U.S. 862.

In addition, generation of steam and power are not the *processing* of sugar cane no matter how "necessary" they may be to that processing, any more than maintenance railroading or milling *are* agriculture because they are "necessary" to it. (See *supra*, p. 25, n. 21.)

Neither does the work performed upon the "bagasse" (the byproduct of the sugar cane used for fuel) come within the processing exemption. The Administrator recognized this fact in his 1939 Interpretative Bulletin already referred to.

> "Operations performed on bagasse, such as removing same from the sugar mill, baling and compressing, are not included in the exemption, since such opera-

tions do not constitute the '*processing of* * * * *sugarcane*' and further such operations do not *result in* sugar and syrup. The exemption, it should be noted, is limited to the processing of sugarcane '*into sugar* * * * or into syrup'." (1941 W.H. Man. at 321.)

Finally, Waialua argued below that the processing exemption applies even during the so-called "off-season" when new machinery is installed and extensive repairs are made to the mill equipment. During this three or four month period of time, no raw sugar whatsoever is produced, nor is any cane harvested, transported or processed.

The District Court's ruling that the exemption does not apply to this period of time is consistent with the legislative purpose of the Act and is in accord with the decided cases. For not only must the employee who is to be excluded from the benefits of the Act be employed "in the place" where the processing occurs, but for the exemption to apply the employer must *be engaged* in the processing operation at the time the exemption is claimed.

Section 7(c) commences by limiting its application to the "case of an employer engaged in . . . processing . . ." Clearly, when the employer's mill is shut down for maintenance and repairs to old machinery and for the installation of new machinery for a three month period of time, the employer is not *at that time* engaged in processing.

In *Maisonet v. Central Coloso, Inc.*, 2 W.H. Cas. 753 (D. P.R.), the court had before it the very contention here advanced by Waialua. In Puerto Rico, as in Hawaii,

there is a substantial period of each year during which the sugar mills are closed down for repairs and no raw sugar is processed. The employers nonetheless contended there, as Waialua does here, that the 7(c) exemption applied during such "off" or "dead" season. In rejecting this contention the court said:

> "The primary purpose of the exemption in question is to permit the employment of persons in seasonal industries, particularly where perishable commodities such as sugar cane are concerned, without the hardship of paying overtime. 'Sugar cane is highly perishable and must be ground very soon after it is cut' (Bowie v. Gonzalez, 117 F.2d 11, 14 [1 WH Cases 99, 100]). But this situation does not obtain during the dead season. There is no similar reason why employees should work more than 40 hours in 'construction and repair work and preparation of the mill for the coming grinding season (zafra).'
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> "The administrator, who has filed a brief as amicus curiae, cited Fleming v. Hawkeye Pearl Button Co., 113 F.2d 52, 57 [1 WH Cases 81, 85] (C.C.A., 8th Cir.) as authority for his contention that 'processing should be limited to these activities which have to do with the conversion of sugar cane into raw sugar and those operations which are so related thereto that they should be considered to have been included.' The Administrator's position seems well taken. In addition to the fact that employees working during the dead season do not come within the purpose of the exemption, it would seem, under the rule of strict construction of exemptions, that during the time these employees work in repair and maintenance,

their employer is not 'engaged in the processing of sugar cane into sugar.'" (2 WH Cases at 755-756.)[29]

The District Court in the case at bar correctly recognized (97 F.Supp. at 208) that the "off-season" is a period devoted to repair and maintenance work on a vast scale, designed to safeguard Waialua's capital investment as well as to insure the uninterrupted functioning of the mill during the harvest season. It is clear from its language that the exemption is premised upon the fact that processing operations are being conducted. When they are the exemption applies; but when, as here, they are not, then the exemption is not applicable. In the circumstances of the case at bar the exemption applies only during such time as the employer is engaged in processing. When the mill is shut down, the exemption does not apply.

Congressional purpose, as expressed in the Act, plainly refutes the contention that activities which may be necessary to processing, as distinguished from processing activities *per se*, should likewise be held exempt. Elsewhere in the Act, Congress demonstrated that, where it desired to cover both a particular activity and some other activity necessary thereto, appropriate language was employed. Thus, Section 3(j) grants coverage to employees who produce goods for commerce, and also to employees whose activities are "*necessary*" to the production of goods for

[29]To the same effect, see *Hoaburg v. Independent Oil Mill Inc.*, 2 WH Cas. 655 (W.D. Tenn.), and *Abram v. San Joaquin Cotton Oil Co.*, 49 F.Supp. 393 (S.D. Cal.). Although both of these cases involved the "dormant season" in the processing of cottonseed, the principle is the same.

commerce. (See pp. 63-65, *infra*.) But in granting the sugar processing exemption to employers, *Congress confined it to the time during which, and the place where, the processing operations per se were taking place.* It would do violence to statutory purpose and language to exempt each and every employee, regardless of the nature of his work or the locale of its performance, merely because certain of his employer's other employees were sometimes engaged in processing. On such a theory, the provisions of this remedial Act could be construed away into virtual ineffectiveness.

IV.

THE VILLAGE MAINTENANCE EMPLOYEES ARE ENGAGED IN THE "PRODUCTION OF GOODS FOR COMMERCE" AND, SINCE THEY ARE NOT OTHERWISE EXEMPT, WERE CORRECTLY HELD BY THE DISTRICT COURT TO BE INCLUDED WITHIN THE COVERAGE OF THE ACT.

Some of the employees here involved spent a considerable portion of their time repairing and painting company houses, cleaning the plantation village, constructing and repairing plumbing installations in the company houses, and constructing and repairing the water and sewage systems servicing such houses. They also engaged in trimming shade trees located around the plantation houses, cutting firewood for use as fuel in the plantation houses, and painting the company gymnasiums and clubhouse.

The District Court held that such employees were engaged in the production of goods for commerce and,

since they fell within none of the exemptive provisions of the Act, were entitled to compensation at the statutory overtime rate for hours worked in excess of 40 in each workweek. The Court of Appeals held that these activities were "purely local in nature" and a "convenient adjunct to farming" (216 F.2d at 473), and therefore exempt from the coverage of the Act. It is submitted that the District Court was correct and that its judgment should be affirmed.

The record reveals that it was necessary for Waialua to furnish housing and community services to its production employees. The village is located upon Waialua's private lands and in isolation and insulation from the rest of the Territory. No other housing in adequate quantity, except that provided by Waialua, is available to the employees. Waialua had originally constructed these houses and established the village for the purpose of supplying necessary dwellings for a stable labor pool which it desired to be in close proximity to its operations. Obviously, what is once constructed must be maintained if the original purpose is not to be defeated. Thus, maintenance of village facilities and dwelling repairs are carried on by Waialua as an integral part of its operations, not as a matter of kindliness or convenience to its employees, more than 98 per cent of whom live in company houses.[30]

Many of the employees who performed work in connection with village facilities were also part of Waialua's

[30]Rental to outsiders is negligible and it is generally confined to tradespeople who operate commercial establishments in the village.

production work force, being attached to the various repair shops which service production machinery and equipment and also administration and office buildings.

Housing and community services originally represented part of the wage payment made to the employees in the form of perquisites. Abolition of this perquisite system in 1946 did not nullify either the original purpose of the housing, or the continued effectuation of that purpose. Indeed, at the very time the perquisite system was ended, Waialua expressly undertook a collective bargaining obligation to continue to furnish repairs and maintenance of housing and village community services (Def's. Ex. B), and expressed its intention of not making housing a profit-making venture.

Under such circumstances it is submitted that the maintenance and upkeep of the village facilities is the production of goods for interstate commerce. Section 3(j) of the Act read, at the time in suit, as follows:

> "'Produced' means produced, manufactured, mined, handled, *or in any other manner worked on* in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, *or in any other manner working on such goods, or in any process or occupation necessary to the production thereof*, in any State."[31]

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[31] Effective January 25, 1950, Congress amended Section 3(j) to read as follows:

> "'Produced' means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling,

In *Kirschbaum v. Walling*, 316 U.S. 517, this Court considered whether employees who operated and maintained a building, in which space was rented to persons who produced goods for interstate commerce, came within the provisions of the Act. Relying principally upon the above italicized provisions of Section 3(j), this Court held such employees to be covered despite the contention that the maintenance of a building was "purely local in nature". (316 U.S. at 524.)

> "But the provisions of the Act expressly make its application dependent upon the character of the employees' activities. And, in any event, to the extent that his employees are 'engaged in commerce or in the production of goods for commerce,' the employer is himself so engaged. Nor can we find in the Act, as do the petitioners, any requirement that employees must themselves participate in the physical processes of the making of the goods before they can be regarded as engaged in their production. Such a construction erases the final clause of Section 3(j) which includes employees engaged 'in any process or occupation necessary to the production' and thereby does not limit the scope of the statute to the preceding

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transporting, or in any other manner working on such goods, or in any *closely related* process or occupation *directly essential* to the production thereof, in any State." [June 25, 1938, c. 676, §3(j), 52 Stat. 1061, October 26, 1949, c. 736, §3, 63 Stat. 911.]

By the amendment the phrase "closely related" was inserted before the words "process or occupation", and the words "directly essential" were substituted for the word "necessary".

We are not concerned here with this amendment because all of the work here involved was performed prior to its effective date. However, it is clear that the purpose of the amendment was more narrowly to confine the meaning of the word "produce" and undoubtedly was a Congressional reaction to this Court's decisions in *Kirschbaum v. Walling*, 316 U.S. 517, and *Borden Co. v. Borella*, 325 U.S. 679, *infra*.

clause which deals with employees 'in any other manner working on such goods' . . .

". . . In our judgment, the work of the employees in these cases had such a close and immediate tie to the processes of production for commerce, and was therefore so much an essential part of it, that the employees are to be regarded as engaged in an occupation 'necessary to the production of goods for commerce' . . .

"The suggestion that the Act, if applied to these employees, goes beyond the bounds of the commerce power is without merit." (316 U.S. at 524-526.)[32]

In *Borden Co. v. Borella,* 325 U.S. 679, this Court held that employees engaged in activities relating to the maintenance and operation of a building which was used substantially as the headquarters of a corporation engaged in interstate commerce, and in which the executive offices of the corporation were housed, were covered by the Act. In determining whether employees were "engaged . . . in the production of goods for commerce," the court said:

"As to the latter category of employees it is unnecessary that they directly participate in the actual process of producing goods inasmuch as Section 3(j) . . . provides that 'for the purpose of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed . . . in any process or occupation necessary

[32]In the subsequent case of *Brooklyn Savings Bank v. O'Neil,* 324 U.S. 697, it was not even questioned that a night watchman employed in a building, a substantial portion of which was devoted to the production of goods for commerce, was entitled to overtime compensation under the provisions of the Act (324 U.S. at 699-700).

to the production thereof, in any State.'" (325 U.S. at 682.)

The court noted that the only distinction between *Borella* and the earlier *Kirschbaum* case was

"... that here the employees work in a building where production of goods is administered, managed and controlled rather than carried on physically. We hold, however, that this distinction is without economic or statutory significance and that it cannot form the basis for concluding that the respondent employees are engaged in occupations unnecessary to the production of goods for commerce". (325 U.S. at 682-683.)

The court recognized that in an economic sense production includes all activities directed to creating or increasing goods and commodities, and is not limited to the physical labor involved in changing the form or the utility of a tangible article. Thus the administration, management and control of the physical processes is also a part of the productive process, and therefore a service such as building maintenance which is necessary to such administration, management and control, is also part of the production. It follows that employees engaged in such maintenance are engaged in an occupation necessary to production and thereby qualify for benefits under the Act.

"Petitioner's industrial organization is such that the operation and maintenance of a central office building is essential to the economy, efficiency and continuity of production." (325 U.S. at 684.)[33]

[33]In the subsequent case of *Schulte v. Gangi*, 328 U.S. 108, it was not even questioned that building maintenance employees in a building the occupants of which produced goods for interstate

So here, too, Waialua's organization is such that the operation and maintenance of the village facilities are essential to the economy, efficiency and continuity of its railroading and manufacturing operations.

Indeed, the court below had previously so construed the statute, relying upon this Court's decision in *Kirschbaum v. Walling, supra.* In *Consolidated Timber Co. v. Womack,* 132 F.2d 101 (CA 9), there was involved the status of employees working in two cook houses maintained and operated by a company engaged in the production of goods for interstate commerce. One of these cook houses was held by the trial court[34] to be "an adjunct to the production of goods and the employees therein are assisting in that process" (*Womack v. Consolidated Timber Co.,* 43 F.Supp. 625 at 632-633 [D. Ore.]), while the other was held exempt as a retail or service establishment under Section 13(a)(2) of the Act. The former holding was affirmed and the latter reversed, the Court of Appeals holding that the employees of both cook houses were covered by the Act.

> "Here the cook house was a 'necessary' part of the Company's production of goods for commerce. It was not operating with the intent or purpose of showing a profit to the owners from the sale of food or service, but to render a very necessary assistance to the business of the Company, which was the production of logs in interstate commerce. The cook house was not

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commerce, were covered by the Act (328 U.S. at 117, 118). See also *Martino v. Michigan Window Cleaning Co.,* 327 U.S. 173 (employees of employer engaged in window cleaning at plants producing goods for interstate commerce).

[34]Judge Fee, who wrote the opinion of the Court of Appeals in the instant case.

a separate or independent establishment; it was actually a *part* of the Company's facilities—a link in the chain—whereby it accomplished the purpose of its existence. Neither cook house was in competition with any private restaurant for there is no evidence of an effort to secure the patronage of the general public; the service was sold at cost to those whom the cook house was intended to serve; the loggers. The principal activity of the cook house definitely was not to furnish service to the consuming public, as such, but was to serve the employees of the Company." (132 F.2d at 107.)

This opinion of the court below was subsequently followed in *Hanson v. Lagerstrom*, 133 F.2d 120 (CA 8). There, as here, the employer argued that the maintenance of the cook house was not "indispensable" to its operation since other facilities were available. But the court said:

"The proximity of hotels at Little Falls and Big Falls, Minnesota, the presence of a highway running past the camp within 150 feet, and other roads kept open the year around, with many men owning cars of their own, are cited as indicating the nonessential character of the cook house. It is also said that the cost of production is the same whether the camp method is used or farmers and shackers are hired. But these suggestions are aside from the question. The fact that defendant might have employed other methods, thus avoiding the necessity of maintaining a cook house, is not important. We are here 'confronted with a condition and not a theory'. We must here confine our consideration to what was actually done and not to what might have been done.

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". . . the cook house was intended primarily for the benefit of defendant's logging employees and to increase his production operations. It is certainly not a typical retail establishment. It was owned by the defendant and operated by him in connection with his logging operations. When these operations cease the cook house with its accompanying service will disappear." (133 F.2d at 122-123.)[35]

The foregoing cases turn upon the fact that the work performed by the service employees is in itself part of the over-all effort for the production of goods for commerce. Supplying such service constitutes an activity covered by the Act where it has a close and immediate tie with the process of production. Although each case depends upon its own facts, the decisive elements were suggested in *Consolidated Timber Co. v. Womack, supra:*

"Was not the greater number of diners of the cook houses engaged in the production of goods for commerce? Were not the cook houses an integral part of an organization devoted to the production of goods for commerce? Does it not follow, reasonably and logically, that the greater part of the service rendered by the cook houses was in interstate commerce rather than in intrastate?" (132 F.2d at 107.)

As the court below recognized in another case, the term "produced" is broadly defined in the Act (*Culver v. Bell & Loffland, Inc.*, 146 F.2d 29, 32 [CA 9]) and this Court

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[35]To the same general effect are the following District Court decisions: *Ferguson v. Prophet Co.*, 6 W.H.Cas. 284 (S.D. Ind.) (employees engaged in preparing food at a plant cafeteria); *McComb v. Factory Stores Co.*, 81 F.Supp. 403 (N.D. Ohio) (employees of company operating canteen on premises of Republic Steel Corporation).

has said that the word "necessary", here employed in the Act, should not be applied in a manner that would give it an unwarranted rigidity; it is a word "to be harmonized with its context". (*Armour & Co. v. Wantock*, 323 U.S. 126, 129-130.) The issue in the *Wantock* case was whether a firefighting service was sufficiently related to the operation of a soap factory as to entitle the service employees coverage under the Act. This Court said:

> ". . . no hard and fast rule may be transposed from one industry to another to say what is necessary in 'the production of goods'. What is practically necessary to it will depend on its environment and position . . . What is required is a practical judgment as to whether the particular employer actually operates the work as part of an integrated effort for the production of goods." (323 U.S. at 130.)

The "practical judgment" of the District Court that the company's maintenance of Waialua Village in the case at bar was part of its effort for the production of goods which were shipped in interstate commerce was clearly correct and should be affirmed.

Waialua also contended below that if these village maintenance employees are held to be engaged in the production of goods for commerce, then they are automatically exempt either under the 13(a)(6) or the 7(c) exemption. This, of course, is not correct[38] and it is quite clear that under the authorities heretofore cited in our discussion of these two exemptions, these village maintenance employees can by no stretch of the imagination

[38]See n. 21, *supra*.

be held to be engaged in either agriculture or the processing of sugar cane.

V.

WHEN AN EMPLOYEE IN A GIVEN WORKWEEK PERFORMS SOME WORK EXEMPT UNDER SECTIONS 13(a)(6) OR 7(c) AND SOME NOT SO, OR OTHERWISE, EXEMPT, HE SHOULD RECEIVE THE OVERTIME BENEFITS OF THE ACT.

Some of the employees here performed, during parts of some of the workweeks involved, work which was exempt from the provisions of the Act as being either agricultural or processing, and during other parts of the same workweek performed work which was not exempt. The District Court held that when, in a given workweek, an employee was so employed, he was entitled to the benefits of the Act.[37] The Secretary of Labor supported this view of the District Court. The Court of Appeals said that this issue was "immaterial" because of its decision. (See *supra,* pp. 47-49, and n. 26.)

The views of the District Court are sustained, as it said, by "an imposing array of decisions". (97 F.Supp. at 232.)

In *Overnight Motor Transport Co. v. Missel,* 316 U.S. 572, this Court had before it the application of the overtime provisions of the Act to an employee "working irregular hours for a fixed weekly wage". (316 U.S. at

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[37]The District Court found: "As a general rule, the engagement by defendants [the employees] in non-exempt activities, in those workweeks where this is found to be the fact, was substantial; and even in those instances where such engagement was small in amount, it was regular and recurring." (97 F.Supp. at 232.)

573.) In determining what was the correct formula to be used in fixing the employee's hourly rate of pay for purposes of computing his overtime compensation, the court determined that the workweek of the employee was the unit to be utilized.

> "Neither the wage, the hour nor the overtime provisions of §§6 and 7 on their passage spoke specifically of any other method of paying wages except by hourly rate. But we have no doubt that pay by the week, to be reduced by some method of computation to hourly rates, was also covered by the act. It is likewise abundantly clear from the words of §7 that the unit of time under that section within which to distinguish regular from overtime is the week. 'No employer shall . . . employ any of his employees . . . (1) for a workweek longer than forty-four hours . . .' ". (316 U.S. at 579.)[38]

Since the provisions of Sections 13(a)(6) and 7(c) make no reference to a unit of time, it is reasonable to suppose that that unit is the one established in Sections 6 and 7(a) and that the "workweek" is the unit to be applied to the exempting sections as well as to the other sections of the Act. Indeed by referring back, as the exempting provisions do, to the more general sections, it is clear that the time unit specified in the general sections are incorporated into the exempting sections.

This appears to be the view of every court that has passed upon the section. *North Shore Corp. v. Barnett*, 143 F.2d 172, 175 (CA 5); *Anderson v. Manhattan Lighterage Corp.*, 148 F.2d 971 (CA 2), cert. den. 326 U.S. 722;

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[38]This view was followed in *Warren-Bradshaw Drilling Co. v. Hall*, 317 U.S. 88, 93.

Fleming v. Swift & Co., 41 F.Supp. 825, 832 (N.D. Ill.), aff'd. 131 F.2d 249 (CA 7); *Jordan v. Stark Bros. Nurseries & Orchids Co.*, 45 F.Supp. 769 (W.D. Ark.);[39] *Shain v. Armour & Co.*, 50 F.Supp. 907 (W.D.Ky.);[40] *Walling v. DeSoto Creamery & Produce Co.*, 51 F.Supp. 938 (D. Minn.);[41] *Walling v. Peacock Corp.*, 58 F.Supp. 880, 883 (E.D. Wis.); *McComb v. Puerto Rico Tobacco Marketing Co-Op Ass'n.*, 80 F.Supp. 953, 957 (D. P.R.), aff'd. 181 F.2d 697 (CA 1); *McComb v. Del Valle*, 80 F.Supp. 945 (D. P.R.); *Walling v. Bridgeman-Russell Co.*, 2 W.H. Cas. 785, 790 (D. Minn.); cf. *Walling v. Jacksonville Paper Co.*, 317 U.S. 564, 571-572; *Bay Ridge Operating Co. v. Aaron*, 334 U.S. 446; *Wabash Radio Corp. v. Walling*, 162 F.2d 391, 393 (CA 6).

And this was the view adopted by the Administrator at the outset:

> "Questions have been presented as to whether an employee who devotes part of his time to an activity described in this section and part of his time to a non-exempt operation is entitled to the benefit of the exemption. It is our opinion that in such case, the employee is not entitled to the exemption. Of course, if the employee is engaged in certain workweeks in *only* the exempt operation, he is entitled to the exemption during such workweeks." (1941 W.H. Man. at 328.)

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[39] ". . . defendant is liable for the minimum wage and overtime compensation for the weeks in which plaintiffs spent any of their time at such [non-exempt] labor . . ." (45 F.Supp. at 771-772.)

[40] "The workweek appears to be the accepted unit of measurement with respect to the services of each employee." (50 F.Supp. at 911.)

[41] "Engaging in both exempt and non-exempt operations in the same workweek renders the employee non-exempt for the entire week." (51 F.Supp. at 943.)

Indeed, no other view is tenable. It would be an utter emasculation of the statute to fractionalize an employee's time any further and would pose administrative problems which would be impossible of solution.

The particularity with which the exemptions provided for in Sections 13(a)(6) and 7(c) is stated indicates an intention not to broaden any further the exemptions thus granted. Such an extension of the exemptions beyond their clearly stated scope would contravene the principle well established under this Act that "Such specificity in stating exemptions strengthens the implication that employees not thus exempted . . . remain within the Act." *Powell v. United States Cartridge Co.*, 339 U.S. 497, 517. See also *Addison v. Holly Hill Co.*, 322 U.S. 607, 617: "Exemptions made in such detail preclude their enlargement by implication." In refusing to "extend an exemption to other than those plainly and unmistakably within its terms and spirit" (*Phillips Co. v. Walling*, 324 U.S. 490, 493), the courts have uniformly refused to interpret exemptions in such a manner as to exempt activities which Congress obviously did not intend to exclude from the scope of the Act.

Furthermore, since "any exemption from this humanitarian and remedial legislation must . . . be narrowly construed . . ." (*Phillips v. Walling*, 324 U.S. 490, 493), the exemption cannot be granted simply because an employee engages in some exempt work if he also engages in other work which Congress clearly intended to subject to the statutory standards. Any other interpretation would open the door wide to evasion of the Act's purpose to eliminate sub-standard labor conditions. It would result

in absorbing into the exemptions parts of industries and activities plainly covered by the Act, simply because the same employees or their employers happened to engage in several kinds of activities, some exempt and others non-exempt.

VI.

THERE IS A REAL CONTROVERSY BETWEEN THE PARTIES CONCERNING THE APPLICABILITY OF THE ACT TO THE EMPLOYEES HERE INVOLVED. THE CAUSE IS IN NO WISE COLLUSIVE AND IS RIPE FOR COMPLETE DETERMINATION BY THIS COURT AT THIS TIME.

Waialua construes the decision below as holding only that the action shoud be dismissed as collusive. However, the Court of Appeals specifically refused to dismiss the employees' counterclaim which it certainly would have done, had that been the extent of its holding. On the contrary, it ordered further proceedings on the counterclaim in accordance with its opinion. In its opinion it gave a full exposition of its views on the questions relating to commerce coverage and the agriculture exemption. Indeed, its order plainly rests upon its view that the company's whole enterprise is outside the scope of the Act because "agriculture is not commerce, interstate or foreign, nor does agriculture affect such commerce in a constitutional sense" (216 F.2d at 476), and that in any event the agriculture exemption applied to all of Waialua's employees.

Thus, there is no point in remanding the case to the Court of Appeals, as is suggested by Waialua, since that court has already expressed itself fully on the merits.

Nor is there any point in sending the case back to the District Court to enter judgment in accordance with the views on the merits expressed by the Court of Appeals since, as we have seen, those views are erroneous. To refer the case back to the lower court again would serve no purpose except to prolong this litigation. This case has been tried twice now, and on the last trial the District Court made "meticulous and exact" findings of fact. There is no question but what the evidence supports those findings, and the only matters left for determination are questions of statutory construction upon which the Court of Appeals has clearly and unequivocally expressed itself—and has expressed itself in a manner which is contrary to the decisions of this Court and of other Courts of Appeals.

A. There is a real controversy between the parties concerning the liability of the employer to pay overtime compensation pursuant to the provisions of the Fair Labor Standards Act.

Although the employees will obtain all the relief to which they are entitled if the District Court's judgment on their counterclaim is affirmed here, they nonetheless are of the view that the Court of Appeals erred in ordering dismissal of Waialua's complaint for declaratory relief.

For that complaint, like the counterclaim, does present an actual and important controversy between the parties concerning Waialua's liability to pay to the employees here involved overtime compensation under the provisions of the Act. The controversy existed for many years before the suit was filed, and it exists today. Clearly, under such circumstances, the District Court had juris-

diction to render a declaratory judgment (28 U.S.C. 2201), and it was error for the Court of Appeals to reverse the District Court for an alleged abuse of discretion in entertaining the suit. *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227; *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U. S. 270; *Railway Mail Association v. Corsi*, 326 U.S. 88. Declaratory relief proceedings have been frequently utilized in cases involving the interpretation and application of the Fair Labor Standards Act (*Tennessee Coal etc. Co. v. Muscoda Local*, 321 U.S. 590; *Jewell Ridge Coal Corp. v. Local 6167*, 325 U.S. 161), and, so far as is known, this is the first time any court has suggested that this procedure is inapplicable to a controversy such as this.

However that may be, this Court need not reach the question since it can determine the merits of the controversy between the parties here by its review of the order of the Court of Appeals reversing the District Court's judgment on the counterclaim rendered in favor of the employees.[42]

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[42]The Court of Appeals' treatment of this aspec of the case is confusing. In its main opinion it recognized that under Section 16(b) of the Act, "each of these employees had an adequate remedy by action at law if any thought he was aggrieved." (216 F. 2d at 478.) It was precisely this remedy which the employees sought to utilize by filing their counterclaim.

However, in its opinion on rehearing, it "construes what is called the cross-complaint as a petition also for declaratory relief." (216 F.2d at 479.) This it obviously was not. It was a complaint for money to which the employees were entitled as overtime compensation, liquidated damages and attorneys' fees, all as provided for in Section 16(b) of the Act.

Despite the court's "construction" of the cross-complaint [counterclaim] as a petition for declaratory relief, that pleading was "left undismissed."

If the counterclaim were in fact a petition for declaratory relief, and if such a petition could not properly be entertained,

B. The case is not collusive.

In its original opinion the Court of Appeals adverted to the agreement on commerce coverage and to the "Stipulation" (R. 27), and suggested that because of these circumstances Waialua's petition had to be dismissed. In its opinion on rehearing, the Court of Appeals stated directly that "the entire cause was tainted by apparent collusion between the parties in an attempt to obtain an advisory opinion on constitutional questions". (216 F.2d at 479.) In this the court was in error.

The commerce agreement was entered into (1) since it is undisputed that the raw sugar produced by Waialua was shipped from Hawaii to the mainland and there refined and sold, and (2) since this Court has consistently held that the commerce power reaches the production of agricultural commodities destined for interstate shipment. *Santa Cruz Fruit Packing Co. v. N.L.R.B.*, 303 U.S. 453; *Mulford v. Smith*, 307 U.S. 38; *United States v. Wrightwood Dairy Co.*, 315 U.S. 110; *Wickard v. Filburn*, 317 U.S. 111; *Mandeville Farms v. Sugar Co.*, 334 U.S. 219; *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755.

Such an agreement did not render the suit collusive. (cf. *Cotting v. Goddard*, 183 U.S. 79.)[43] Still to be tried

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then the Court of Appeals should have dismissed it also. The fact that it did not, demonstrates that irrespective of the court's "construction," it recognized that in fact the counterclaim was an action at law to recover overtime compensation, liquidated damages, and attorneys' fees.

[43] "There is no force in the suggestion that the officers of the corporation agreed with the stockholders as to the unconstitutionality of the statute, and that therefore the suit is a collusive one. That was the condition in *Dodge v. Woolsey*, 18 How. 331,

out were the issues of statutory construction about which the parties were in sharp disagreement.

It was not suggested by the Court of Appeals that the stipulation as to facts does not truly reflect the facts about Waialua's operations and the parts played therein by the employees here. Such a stipulation does not render a suit collusive, but on the contrary it is looked upon with favor since it expedites litigation and permits a court to get quickly to the heart of the issues between the parties.[44]

Stipulations as to facts in cases arising under the Fair Labor Standards Act have long been received as appropriate (*Roland Electric Co. v. Walling*, 326 U.S. 657, 661-662; *Boutell v. Walling*, 327 U.S. 463, 465, 468; *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 725; *Puerto Rico Tobacco Marketing Corp. v. McComb*, 181 F.2d 697, 698 [CA 1]), and "concessions" respecting commerce coverage (*Kirschbaum v. Walling*, 316 U.S. 517, 519; *149 Madison Avenue Corp. v. Asseta*, 331 U.S. 199, 201;

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and it only emphasizes the fact that the officers were refusing to protect the interests of the stockholders, not wantonly, it is true, but from prudential reasons." (183 U.S. at 113.)

[44]Chief Justice Taney said many years ago:

". . . It sometimes happens that for the purpose of obtaining a decision of the controversy, with[out] incurring needless expense and trouble they [the parties] agree to conduct the suit in an amicable manner, that is to say, that they will not embarrass each other with unnecessary forms or technicalities, and will mutually admit facts which they know to be true, and without requiring proof, and will bring the point in dispute before the court for decision, without subjecting each other to unnecessary expense or delay . . . Such amicable actions, so far from being objects of censure, are always approved and encouraged, because they facilitate greatly the administration of justice between the parties." (*Lord v. Veazie*, 8 How. 251, 255.)

Farmers Reservoir & Irrigation Co. v. McComb, 337 U.S. 755, 758), and "agreements" respecting the scope of the agriculture exemption (*Bowie v. Gonzalez*, 117 F.2d 11, 17 [CA 1]) have been accepted without question.[45]

Although the parties agreed upon the obvious fact that the production of the raw sugar was the production of goods for interstate commerce,[46] and further stipulated to the *facts* concerning Waialua's operations and the employees' role therein, they differed sharply respecting the applicability to those facts of the agriculture and processing exemption; and they differed respecting liability to pay overtime compensation in a workweek in which an employee did some exempt and some non-exempt work. These differences, which went to the heart of the case, were sharply contested in the pleadings, arguments and briefs in both courts below. An examination of the petition for certiorari in No. 357 and the response thereto demonstrates that those differences exist today, and it

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[45]When the author of the opinion below sat as a District Judge he remarked in a case tried before him under this statute:

> "The pre-trial order was drafted jointly by the attorneys for the respective parties and is here set out in full as an excellent example of such an order. The agreed facts are concisely stated and the issues are clear cut for decision, and documents necessary for the determination were marked and listed therein. Such an outstanding consolidated pleading requires special commendation of the draughtsmen." (*Womack v. Consolidated Timber Co.*, 43 F.Supp. 625, 626-627 [D. Ore.].)

See also the opinion of the Court of Appeals in the same case stating, without any suggestion of criticism, that "the facts were stipulated to prior to trial". (*Consolidated Timber Co. v. Womack*, 132 F.2d 101, 104 [CA 9].)

[46]Despite the general agreement as to commerce coverage, the parties differed as to whether or not the employees in and around Waialua Village were engaged in the production of goods for commerce.

is to resolve the conflict between the parties on those issues that the employees sought and obtained review in this Court. Thus it is seen that the suit is not tainted with collusion.

Solely because the parties have sought to eliminate from the suit all issues about which they reasonably could have no controversy and have sought to expedite and facilitate the judicial process by stipulating as to those facts about which there could be no dispute, they ought not to be criticized. But in any case, they have presented a factual record to the courts below and to this Court upon which a determination of their conflicting positions, respecting the construction of the statute and its application to the facts at hand, can be readily made.

C. The entire controversy is ripe for disposition by this Court.

In its Brief in Opposition in No. 357, Waialua argued that the employee's petition improperly presented questions which were not passed upon by the Court of Appeals and urged this Court to limit the writ to "the issue of 'case or controversy' underlying the judgment below, so that review by this Court on the respective petitions of the parties (in Nos. 357 and 358) may eventuate in a directive to the Court of Appeals to resolve the controversy between the parties on the merits."[47]

Despite this Court's unquestioned power to limit the issues it will consider on review (*Protective Committee v. Securities Exchange Commission*, 346 U.S. 810; *Part-*

[47]Brief in Opposition, No. 357, pp. 9-10.

mar v. Paramount Pictures Corp., 345 U.S. 963; *Bridges v. United States*, 345 U.S. 904, and 345 U.S. 920; *Dennis v. United States*, 340 U.S. 863, and 341 U.S. 494, 495-496, 518), this Court refused to impose any such limitation in its order granting certiorari in these cases (348 U.S. 870). On the contrary, in consolidating the cases, and particularly in inviting the Solicitor General to present the views of the Secretary of Labor, this Court made it clear that it considered the merits of the controversy to be before it. It is unlikely that the Secretary's views would have been invited had this Court conceived that it was not going to decide those questions of statutory construction here presented which have such an important bearing upon the administration of the Fair Labor Standards Act.

Perhaps we need say no more on this point, but we are constrained to observe, in conclusion of it, that an examination of the opinion of the Court of Appeals quickly dispels the notion that that court did not pass upon the merits of the cause. Its repeated references to the statutory provisions involved and its citation of cases dealing with the scope of the agriculture exemption demonstrate that it considered and decided the important questions of statutory construction that are presented by the employees in their petition for the writ in No. 357. The oral argument and the briefs in the Court of Appeals, both those submitted by the parties and that submitted by the Secretary of Labor *amicus curiae*, dealt fully and extensively with those questions. The factual record was full and complete and the Court of Appeals expressed its views on these questions. Finally, the briefs

already filed here—and those we expect yet to be filed—will also deal exhaustively with these questions.[48]

CONCLUSION.

As in other cases arising under this Act, where an employer seeks to have the line drawn differently than the Administrator has done, the determination must in the last analysis depend "upon the larger considerations of national policy" which govern judicial construction. (*Kirschbaum v. Walling*, 316 U.S. 517, 523.)

This Court has noted that:

> "The Fair Labor Standards Act was designed 'to extend the frontiers of social progress' by 'securing

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[48]For all these reasons, the cases referred to by Waialua (Brief in Opposition, No. 357, pp. 8-10) are clearly not in point. For example:

United States v. Ballard, 322 U.S. 78, 88:

> "The Circuit Court of Appeals did not reach those questions . . . [Those] questions were not fully presented to this court either in the briefs or oral argument. In view of these circumstances we deem it more appropriate to remand the cause to the Circuit Court of Appeals so that it may pass upon the questions reserved . . . If any questions of importance survive and are presented here, we will then have the benefit of the views of the Circuit Court of Appeals."

Aetna Casualty & Surety Co. v. Flowers, 330 U.S. 464, 468:

> "But those questions were not passed upon by that Court [of Appeals] nor adequately presented here."

Land v. Dollar, 330 U.S. 731, 739:

> "The questions have not been briefed or argued. Moreover, the present record may not present all the facts necessary for disposition of the motions."

NLRB v. Pittsburgh Steamship Co., 337 U.S. 656, 661:

> "The applicability and possible effect of either or both of these statutes apparently were not dealt with by the Court of Appeals, which neither discussed the statutes nor cited cases concerning them; . . ."

> to all our able bodied men and women a fair day's pay for a fair day's work.' Message of the President to Congress, May 24, 1934." (*Phillips Co. v. Walling,* 324 U.S. 490, 493.)

and that

> "The Fair Labor Standards Act . . . is a part of the social legislation of the 1930's of the same general character as the National Labor Relations Act . . . and the Social Security Act . . ." (*Rutherford Food Corp. v. McComb,* 331 U.S. 722, 723.)

Turning from these general observations to the specific method conceived by Congress to achieve its objectives, this Court has declared that it was the intent of the legislation

> ". . . to exclude from interstate commerce goods produced for the commerce and to prevent their production for interstate commerce under conditions detrimental to the maintenance of the minimum standards of living necessary for health and general well-being; and to prevent the use of interstate commerce as the means of competition in the distribution of goods so produced, and as the means of spreading and perpetuating such substandard labor conditions among the workers of the several states." (*United States v. Darby,* 312 U.S. 100, 109-110.[49]

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[49]"The motive and purpose of the present regulation are plainly to make effective the Congressional conception of public policy that interstate commerce should not be made the instrument of competition in the distribution of goods produced under substandard labor conditions, which competition is injurious to the commerce and other states from and to which the commerce flows." (*United States v. Darby,* 312 U.S. 100, 115.)

"The Fair Labor Standards Act was passed by Congress to lessen, so far as seemed then practicable, the distribution in commerce of goods produced under sub-normal labor conditions. An

As this Court has said, the purpose of the Congress was not merely to regulate interstate commmerce as such, but also "to eliminate, as rapidly as practicable, substandard labor conditions throughout the nation. It sought to raise living standards without substantially curtailing employment or earning power." (*Powell v. United States Cartridge Co.*, 339 U.S. 497, 510.)

Upon these premises, this Court has solved a multitude of problems that have arisen under the Act. Thus, in *Roland Electric Co. v. Walling*, 326 U.S. 657, the Court, recognizing that the Act sought to eliminate substandard labor conditions throughout the country, said:

> "This purpose will fail of realization unless the Act has sufficiently broad coverage to eliminate in large measure from interstate commerce the competitive advantage accruing from savings in costs based upon substandard labor conditions. Otherwise the Act will be ineffective and will penalize those who practice fair labor standards as against those who do not." (326 U.S. at 669-670.)

For this reason, and not merely because of the existence of any mechanical rule of statutory construction, as the Court of Appeals seemed to think,[30] this Court has confined the exemptions to their narrowest possible scope consistent with the language of the statute.

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effort to eliminate low wages and long hours was the method chosen to free commerce from the interference arising from production of goods under conditions that were detrimental to the health and well-being of workers. It was sought to accomplish this purpose by the minimum pay and maximum hours provisions . . ." (*Rutherford Food Corp. v. McComb*, 331 U.S. 722, 727.)

[30] 216 F.2d at 475.

> "To fail to cover in this Act the multitude of employees who are engaged in establishments like that of the petitioner and which supply the materials and services currently needed for the maintenance of productive machinery used by those who produce goods for interstate commerce would take the heart out of this Act. Savings resulting from substandard labor conditions would be reflected directly into competitive costs. This would weaken the governmental mechanism for sustaining the minimum standard of living necessary for the health, efficiency and general well-being of workers referred to as the purpose of the Act." (*Roland Electric Co. v. Walling*, 326 U.S. 657, 668.)[51]

From the time it was first enacted up to the very moment that this brief is being written,[52] the strengthening of the Act has been favored as important national policy. During the administration of three different Presidents and in the platform and program of both major parties, the broadening of the coverage of the Act has constantly been urged.

The Court of Appeals, manifestly disagreeing with the public policy on which the Act rests,[53] gave it a construc-

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[51] "Any exemption from such humanitarian and remedial legislation must therefore be narrowly construed, giving due regard to the plain meaning of the statutory language and the intent of Congress. To extend an exemption to other than those plainly and unmistakably within its terms and spirit is to abuse the interpretative process and to frustrate the announced will of the people." (*Phillips v. Walling*, 324 U.S. 490, 493.)

[52] See the State of the Union Message, delivered by President Eisenhower to the Joint Session of the 84th Congress, January 6, 1955, *New York Times*, January 7, 1955, pp. 10, 11.

[53] On two occasions the Court of Appeals called the Act "drastic" (216 F.2d at 468, 475), and on another occasion it referred to the machinery set up under it as "federal bureaucratic control" (216 F.2d at 478).

tion which defeats that purpose, takes the heart out of the Act, and would give to Hawaiian sugar producers an unfair advantage over their competitors from the mainland, Puerto Rico, and elsewhere.

The District Court, on the other hand, after making "meticulous and exact findings", applied the Act to the employees here in a manner thoroughly consistent with this Court's decisions.

For the foregoing reasons, the judgment of the Court of Appeals should be reversed and the judgment of the District Court should be affirmed.

Dated, San Francisco, California,
January, 1955.

Respectfully submitted,

RICHARD GLADSTEIN,
NORMAN LEONARD,
Attorneys for Petitioners
Ciraco Maneja, et al.

EWING SIBBETT,
Of Counsel.

(Appendix Follows.)

Appendix.

Appendix

When each of the employees here involved performed the following types of work, the District Court held that he or she was entitled to overtime compensation:

Ciraco Maneja (R. 191-193):

> As a mechanic and machinist working in the tractor repair shop, he made repairs and performed general overhauling work on tractors, tractor parts and various other machines and implements. He also repaired cane cars in the mill yard.

Cornelio Asuncion (R. 193-135):

> Repaired portable track in repair station and fields, repaired tractors, hauled cane cars, worked on pile-up of cane cars in locomotive wreck, dislodged rails.

Tsuruo Hayashi (R. 196-197):

> Repaired caneloading machines and parts, cleaned caneloading machine repair shop.

Koichi Okouchi (R. 198-201):

> Repaired track in section repair station, tractors at tractor repair shop, portable pump used for drainage and irrigation ditches, tractor auxiliary implements at shop, portable track at section repair shop. Leveled track lines; laid, or removed to storage at mill yard, temporary main line railroad; dislodged for removal to storage rails placed on plantation by U.S. Army as lessee of part of premises during the war.

Tadao Watanabe (R. 201-204):

Repaired tractors at shop, tractor auxiliary implements at shop, grader at shop, caneloading machines at shop, tractor repair shop equipment.

Peter Holmberg (R. 205-206):

As a locomotive engineer, he hauled cane cars and portable track rail cars; he operated locomotive to switch broken cane cars to repair station in mill yard; he repaired locomotives and main line of plantation railroad.

Barney Faria (R. 206-208):

Repaired locomotives in roundhouse, parts for crushing plant in machine shop, plumbing shop tools and implements in machine shop; made parts for new cane seed planting machine in machine shop.

Hatsusuke Sera (R. 208-210):

As a section hand on mainline railroad, he repaired railroad tracks of mainline railroad by replacing worn equipment such as rails, spikes and ties; cleaned and lubricated switches on mainline railroad; maintained rights-of-way of mainline railroad by w[illegible]ding and cutting trees; graded and leveled uneven sections of trackway on mainline railroad; installed and removed field switches for connecting mainline railroad to cane field portable track lines; assisted in clearing train wrecks and repairing derailed locomotives and cars; loaded railroad ties on freight cars in mill yard; directed traffic as flagman

at railroad crossing of mainline railroad; otherwise repaired and maintained mainline railroad.

Takumi Okouchi (R. 210-212):

As a flagman and railroad maintenance worker, he weeded along mainline railroad; laid temporary mainline railroad on plantation roadway adjoining a harvesting field; directed traffic at intersections of public highways and mainline railroad in connection with crossing of public highways by plantation locomotives and trains; cleared debris and fallen cane from intersections and collected same into piles at roadside; scraped and removed dirt accumulated on intersections; did maintenance work on rights-of-way of railroad, such as weeding and cutting trees. Also he repaired cane processing equipment in mill

Masaiki Oato (R. 212-215):

Performed variety of electrical repair work in electric shop, hospital, on transmission lines, in dwellings located in plantation village and occupied by Waialua's employees, in power plant, at main administration office, at tractor repair shop, on mill equipment, in mill yard, service station, fire room equipment, on electric supply system, at church off plantation, at herbicide station in mill yard, on pumps, on electric shop equipment, at Waialua Lions Club off plantation, on irrigation booster pump, at clubhouse and at church in plantation village, at independent retail store in plantation village. He also worked as auxiliary tender in power house and as power plant op-

erator in power plant. He also cleaned electric shop, repaired machine shop equipment, installed pump at mill and installed mill equipment.

Dionicio Carrit (R. 216-218):

Handled and shoveled bagasse; regulated flow of bagasse to furnaces; operated fuel oil pumps and burner; started and stopped fireroom machinery; watched boiler water levels; cleaned and made repairs to fireroom equipment during weekend shutdown.

Seraphine Robello (R. 218-220):

Started, operated and stopped generating units; operated switchboard equipment; kept a log of power house operations; made repairs and adjustments to all power plant equipment; supervised equipment which showed the interchange of power between the plantation and the Hawaiian Electric power systems; started, stopped, serviced and repaired air compressors; cleaned and repaired power plant equipment.

Damaso Claunan (R. 220-223):

As a mechanic, he repaired trucks and automobiles in garage; occasionally repaired concrete products plant equipment, mill equipment, air compressors, equipment used in maintaining domestic sewer and domestic water supply system in plantation village, garage equipment.

Fumio Sunahara (R. 223-226):

As a welder, he repaired the following types of equipment: stable equipment, cane cars, locomotives, mill equipment, equipment for garage, equipment at bathhouse, rolling stock, machine used to plant cane seed, service station equipment, fireroom equipment, hand truck, warehouse building, machine shop equipment, irrigation flume forms, laboratory equipment, herbicide station equipment, stoneboat sled, tractors, electric transmission lines, plows, dwellings, power plant equipment, electrical supply system maintained at plantation village for servicing dwellings, hospital equipment, equipment used for maintenance of plantation roads, equipment of plantation irrigation system, fire protection equipment, portable track, trucks; he also made improvements for dwellings of Waialua's employees.

Toshio Tanaka (R. 227-231):

As a machinist, he machined parts for mill equipment, caneloading machines, trucks, tractors, tractor auxiliary implements, pump equipment, irrigation equipment, hospital equipment, locomotives, mill pump equipment, fireroom equipment, electric shop equipment, welding shop equipment, roundhouse equipment, concrete mixer, portable track, power plant equipment, garage equipment, tractor repair shop equipment, fire protection equipment, herbicide hand spraying equipment, cane cars, laboratory equipment, automobiles used in cane field supervision, equipment for parks and playgrounds; equipment

used to survey plantation cane fields. He also improved dwellings in plantation village.

Masaru Ezawa (R. 231-235):

As a mechanic in the tractor repair shop, he repaired tractors, tractor auxiliary implements, concrete mixer, grader, haul cane equipment. trucks, air compressors.

Domingo Guigui (R. 235-239):

As a truck driver, he hauled labor, material and equipment for cane cleaning plant, stable, cane field operations, warehousing of fertilizer used in cane field operations, plantation villages, plantation retail store, clubhouse, bathhouse, boiling house, firewood operations, repair of village roads, fireroom, playground, tractors, irrigation system, crushing plant, macadamia nut grove, pumps, field roads. He also stood by at garage as fire truck operator; piled firewood; cleaned room at mill yard used to store tools for cane field operations; repaired plantation village roads; towed trucks engaged in hauling fertilizer for use in cane fields from fields to garage for repairs.

Alfred Reyher (R. 239-243):

As a mechanic attached to the caneloading machine repair shop, he repaired caneloading machines in fields and shop, repaired caneloading buckets, repaired field drainage pipeline in cane fields. He cleaned the shop; hauled labor; made new type cane

grab in shop; and removed acetylene generator to be junked from garage.

Hirosaku Takata (R. 243-248):

As a blacksmith, he repaired equipment used in cane field operations, tractor auxiliary implements, cane cars, caneloading machines, mill equipment, trucks, grader, electric shop equipment, portable track rail cars, tractors, locomotives, portable track, plantation village sewerage system equipment, fireroom equipment, cane grab, hospital equipment, concrete products plant equipment, service station equipment, blacksmith shop equipment, power plant equipment, machine shop equipment, and pump equipment. He also reconstructed railroad rock cars into portable track railcars and shod horses and mules at stable.

Antone Vierra (R. 248-256):

As a truck driver, he hauled labor, material and equipment for cane field operations, stable, irrigation system, plantation railroad, fireroom, concrete products plant, plantation village, firewood operations, supplies, warehouses, stones from cleaning plant, off plantation, for building stone wall, crushed rock to plantation village for repair of village roads, gymnasium, roundhouse, macadamia nut seedlings from Honolulu, herbicides from off plantation to plantation warehouse, macadamia nut grove, crushed rock from off plantation to concrete products plant, crushed rock from off plantation to plantation village for repair of sewer system, field roads, tinsmith

shop repairing irrigation scoops, storage of plantation railroad ties and equipment, clubhouse, crushed rock from off plantation to cane fields for repair of field roads, crushed rock from off plantation to plantation village for repair of village sidewalks. He also did maintenance work in mill yard.

Jiro Sakai (R. 256-257):

Painted dwellings in plantation village, clubhouse, housing department office.

Yukishige Tsutsui (R. 257-258):

Produced concrete flumes, pipes and other concrete products, concrete blocks used as foundations for dwellings of Waialua's employees in plantation village, concrete products used as equipment in such dwellings, square blocks used as sidewalks in plantation village. He also worked at warehouse as helper.

Toshio Kashiwabara (R. 259-263):

As a plumber, he repaired plumbing facilities at dwellings, playground, gymnasium, hospital, clubhouse, Waialua's retail store, beach home near plantation owner of said home being charged for such repair work, main administration office, barber shop in plantation in building leased by Waialua, carpenter shop, bathhouse, slaughterhouse, Waialua Dairy, tractor repair shop, garage, mill, church in plantation village, laboratory; he also repaired plumbing shop equipment, water tank of locomotives, fire hydrant, water line of City and County of Honolulu, sewage

system equipment and water supply system in plantation village, water supply system in plantation cemetery, pipe line for pumps, and service equipment on trucks at plumbing shop.

Edwin Mori (R. 264-265):

As a carpenter, he worked at the carpenter shop repairing cane cars, portable track rail cars; also at the carpenter shop he reconstructed railroad rock cars into portable track rail cars, cut pipes for use in irrigation, cleaned carpenter shop, constructed forms for cesspools for dwellings. He also repaired dwellings, constructed new housing department office, and drew plans for dwellings and for wash houses for dwellings.

Genjiro Hironaka (R. 266-273):

As a carpenter at the carpenter shop, he repaired tools used in cane field operations, repaired mill equipment, carpenter shop tools, locomotives and parts, made and repaired cane car equipment, made equipment for caneloading machine repair shop, made improvements for dwellings, did carpentry work for use at Christmas program in clubhouse, constructed shelter houses for flagmen, repaired trailers, constructed coffins, repaired cane cars, power plant equipment, trucks, tools used in cutting fire wood, fireroom equipment, laboratory equipment, educated children in carpentry work in connection with high school cooperative worker program, repaired welding shop equipment, concrete products

plant tools and equipment, irrigation equipment, electric shop equipment, main administratior office equipment, did carpentry work for warehouse, repaired tools used in maintenance of plantation villages, pump station equipment, fences for use along plantation cane fields, stable equipment, garage equipment, made haul cane warning signs, repaired caneloading machines, did carpentry work for new housing department office, made main administration office equipment, repaired paint shop equipment, made equipment used in constructing part of sewage system for plantation village, repaired roundhouse equipment, equipment used in maintenance of plantation village, made irrigation equipment, repaired plumbing shop tools, did carpentry work for clubhouse.

Antone Robello (R. 273-276):

Serviced caneloading machines, tractors, air compressors, concrete mixer, automobiles, trucks, concrete products plant equipment, locomotives, herbicide sprayer, fire equipment trailer, garage equipment, equipment at mountain home on plantation maintained for recreational use of Waialua's employees. Also operated school bus to transport children of Waialua's employees to and from school.

Yoshiji Yamada (R. 277-278):

As a carpenter, he repaired dwellings, irrigation equipment, machinery and equipment used in cane

processing operations, water tank used to supply water to locomotives, pump equipment, sewer system in plantation village; constructed new housing department office; drove pickup truck to haul materials for repairing dwellings.

Roque Crisostomo (R. 279-283):

Operated grader on field roads, cane fields, playground area, village roads, banks for disposal area, around plantation buildings and yard area, grounds of independent retail service station and garage in plantation village, grounds around gymnasium. Repaired tractors, grader, sewer system, irrigation system. Hauled sand for repair of field and plantation village roads, benches and chairs from gymnasium, fertilizer, lumber, crushed rock and supplies and equipment for repair of irrigation system, rubbish, furniture, firewood.

Moses Fernandez (R. 284):

As village cleaner, he cleaned roads in plantation villages, parks, playground, cemetery, cleaned gymnasium, yards of Waialua's employees in plantation village, and weeded at macadamia nut grove.

Louis Pacheco (R. 285-286):

As a laboratory technician he collected daily samples of cane leaves for analysis; performed clerical activities pertaining to assembly and correlation of laboratory information.

Margaret Fujiwara (R. 286-288):

During grinding season, as a laboratory technician she made analyses of sugar juices and syrups, determined hydrogen ion, density and salt concentrates of water used in mill and for locomotives, checked pump water for irrigation and domestic purposes. As a clerk during off-season she typed reports and did clerical work for laboratory; analyzed cane leaf sheaths. She recharged fire extinguishers.